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the United States

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Pages 479 to 664

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

ROBERT E. LEE
NICHOLAS JOHNSON
H. REX LEE
CHARLOTTE T. REID
RICHARD E. WILEY
BENJAMIN L. HOOKS

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F.C.C. 72-716

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications by ROBERT P. ADAMS, ASSIGNOR, AND PROGRESS RADIO NETWORK, INC., ASSIGNEE For Assignment of License of Station KUTE-FM, Glendale, Calif.	BALH-1578

AUGUST 9, 1972.

ROBERT P. ADAMS,
Occidental Center,
30th Floor,
Los Angeles, Calif. 90015

RICHARD G. STEVENS, ESQ.,
Progress Radio Network, Inc.,
5900 Wilshire Boulevard,
Los Angeles, Calif. 90048

GENTLEMEN: This refers to the pending application to assign the license of Station KUTE-FM, Glendale, California, from Robert P. Adams to Progress Radio Network, Inc. (BALH-1578) and the Petition to Deny filed against it by Mount Wilson Broadcasters, Inc., licensee of Station KBCA-FM, Los Angeles, California.

The Petition to Deny filed against your application raises many questions regarding the assignee's ascertainment of the community needs and the programming format and service proposed to meet the needs of the city of Glendale. Upon review of the application and the pleadings, the Commission is unable to make the requisite statutory finding that the public interest will be served by a grant of the application. Accordingly, the application must be designated for an evidentiary hearing. Although the hearing order may include other or subsidiary issues, the basic questions to be resolved are (1) whether assignee's proposed programming is realistically designed to serve the needs and interests of the community of Glendale where KUTE is the only full-time station and (2) whether the proposed programming and the assignee's stated intention to change the main studio location will result in a *de facto* reallocation of the station from Glendale to Los Angeles of which Glendale is a suburb.

You are requested to notify the Commission within twenty (20) days of the date of this letter whether you intend to prosecute the application through the hearing process.

Commissioners Robert E. Lee, Acting Chairman; H. Rex Lee and Richard E. Wiley, acting as a Board.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-111

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Advisory Committee To Consider Technical Standards for Cable Television Systems

FEBRUARY 3, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), BARTLEY, ROBERT E. LEE, JOHNSON, REID, AND WILEY, ISSUED THE FOLLOWING PUBLIC NOTICE:

As proposed in its "Letter of Intent," 31 FCC 2d 115, 134, and in accordance with Section 3(b) of Executive Order 11007, 27 F.R. 1875 (February 28, 1962) and as noted this day in its Cable Television Report and Order, the Commission has created a Cable Television Technical Advisory Committee to deal with problems of technical standards. Chairman Burch will head the Committee, and Mr. Sol Schildhause, Chief of the Commission's Cable Television Bureau, will be its Vice-Chairman.

The Commission expects that the Advisory Committee will attempt to formulate and propose technical standards for carriage of cable originated programs, return (two-way) communication, and various miscellaneous cable services as they develop. In related effort, the Commission expects shortly to request comments on such matters as limitations on permissible cross-modulation, ghosting, measurement techniques, and carriage of aural broadcast signals (31 FCC 2d 134).

The Commission wishes to make clear that, although the Committee will be advisory only, its recommendations are expected to be most helpful to the Commission in formulating its future policies in this area.

It is anticipated that the membership of the Advisory Committee will consist of, but not be limited to, representatives of the cable television industry, the electronics industry, and public-interest groups and, of course, members of the Commission staff.

Persons desiring to participate in the work of the committee should so advise the Vice-Chairman of the committee, in writing, by March 15, 1972.

F.C.C. 72-113

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Advisory Committee for Federal-State-Local Relationships Concerning the Regulation of Cable Television

FEBRUARY 3, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), BARTLEY, ROBERT E. LEE, JOHNSON, REID AND WILEY ISSUED THE FOLLOWING PUBLIC NOTICE:

As proposed in its "Letter of Intent," 31 FCC 2d 115, 139, and in accordance with Section 3(b) of Executive Order 11007, 27 F.R. 1875 (February 28, 1962), and as noted this day in its Cable Television Report and Order, the Commission has created a Cable Television Advisory Committee to deal with problems of Federal-State/Local Relationships. Chairman Burch will head the Committee, and Mr. Sol Schildhause, Chief of the Commission's Cable Television Bureau, will be its Vice-Chairman.

The role of the Advisory Committee will include, but will not necessarily be limited to, the collection and analysis of information pertaining to the following subjects:

(a) Enforcement of minimum procedural requirements in the local franchising process.

(b) Enforcement of service and technical standards.

(c) Regional interconnection of cable systems.

(d) Construction timetables, and equitable development of service areas.

(e) Possibility of framing standardized franchise terms, forms, applications, etc.

(f) Methods of establishing subscriber rates, access costs, leased channel rates, franchise fees, etc.

(g) Franchise applicant selection criteria.

The Commission wishes to emphasize that, although the committee will be advisory only, its recommendations are expected to be most helpful to the Commission in formulating its future policies in this most critical area.

It is anticipated that the membership of the Advisory Committee will consist of, but not be limited to, representatives of state and municipal entities, the cable television industry, and public-interest groups, and, of course, members of the Commission staff.

Persons desiring to participate in the work of the committee should so advise the Vice-Chairman of the committee, Mr. Sol Schildhause, in writing, by March 15, 1972.

F.C.C. 72-708

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 97 OF THE COMMISSION'S RULES GOVERNING THE AMATEUR RADIO SERVICE TO RESTRICT A5, F5 EMISSIONS TO THE BAND DIVISION BETWEEN OPERATOR LICENSE CLASSES	RM-1907

ORDER

(Adopted August 2, 1972; Released August 8, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, ACTING CHAIRMAN; H. REX LEE AND WILEY ACTING AS A BOARD.

1. A petition for rule making in the Amateur Radio Service has been filed by Paul T. Atkins, Park Ridge, New Jersey, WB2OZW. Petitioner proposes that slow scan television operation be further restricted to a segment within each frequency sub-band where such operation is now permitted.

2. Section 97.61 of the Rules provides for A5 and F5 television emissions on certain amateur frequency bands. Section 97.65(d) restricts the bandwidth of A5 and F5 emissions on frequencies below 50 MHz to no more than that of an A3 telephony single sideband emission. The frequencies below 21.350 MHz where such slow scan television operation is permitted are available only to Amateur Extra Class licensees and, to a lesser extent, to Advanced Class licensees. Petitioner proposes to modify the Rules to require that slow scan television operation be confined to the higher frequency portions of each of the sub-bands. Petitioner is of the opinion that slow scan television and single sideband are not compatible on a crowded band, and slow scan television stations must compete with others desiring to use the same frequencies.

3. There is no prohibition in the rules preventing amateurs from operating in the manner proposed. There should be no more of a compatibility problem between a radiotelephony single sideband station and a slow scan television station attempting to use the same frequency than between two radiotelephony stations or between two slow scan television stations, due to the similarity of the two emissions. The Commission is of the opinion that frequency planning and coordination by amateur operators themselves can result in the best spectrum utilization appropriate to the service.

4. Petitioner also proposes modifications to the rules for call letter assignment. This aspect of the petition will be considered separately.

5. For the reasons set forth herein, it is concluded that the institution of rule making as requested by the petitioner is neither appropriate nor warranted, and it is, therefore **ORDERED** that the petition filed by Paul T. Atkins, WB20ZW, in so far as it would require A5 and F5 emissions to be only permitted in a more restrictive manner than now allowed **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-619

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO., LONG LINES DEPARTMENT Revisions of Tariff F.C.C. No. 260 Private Line Services, Series 5000 (TELPAK)	Docket No. 18128
AMERICAN TELEPHONE & TELEGRAPH CO. Revision of American Telephone & Telegraph Co., Tariff F.C.C. No. 260 Series 6000 and 7000 Channels (Program Transmission Services)	Docket No. 18684

MEMORANDUM OPINION AND ORDER

(Adopted July 12, 1972; Released July 17, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has before it petitions for reconsideration filed by American Telephone and Telegraph Company (AT&T) and Western Union Telegraph Company (Western Union), urging deletion of paragraph 11 from our Memorandum Opinion and Order[1] adopted February 3, 1972, and released February 7, 1972, in which we suspended until May 4, 1972, certain revisions filed by AT&T on December 6, 1971,[2] to its private line service, Tariff F.C.C. No. 260. Paragraph 11 instructed Respondents, pursuant to Section 4(j) of the Act, to refrain from filing further tariff revisions to its services under investigation in the above-captioned proceedings, prior to the entering of a final decision therein, unless the Commission so authorizes by special permission. A joint response to AT&T has been received from American Broadcasting Companies, Inc., Columbia Broadcasting Systems, Inc., and National Broadcasting Company (Networks), requesting reconsideration of paragraph 11 only with respect to program transmission services. Hughes Sports Network, Inc. (HSNI) and Microwave Communications, Inc. (MCI) have submitted oppositions to AT&T's petition, and AT&T has replied to those oppositions.

2. AT&T argues that paragraph 11 violates the regulatory plan of the Communications Act in three respects. First, it allegedly contravenes the statutory scheme embodied in §§ 203–205, purportedly vesting in the carrier the fundamental right to initiate tariff filings, without obtaining prior approval. Second, it allegedly is tantamount

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[1] 33 F.C.C. 2d 522, F.C.C. 72-118.
[2] Transmittal No. 11334.

to a prescription of rates, rendered without appropriate findings and full opportunity for hearings, and therefore violates the terms of § 205. Third, it allegedly amounts to an unlawful assertion of the power to reject a tariff filing not contemplated by the narrow rejection authority that is defined by the Commission's inherent powers and in § 203(d).

3. AT&T contends that Section 4(j) does not furnish the requisite statutory support for the requirement imposed by paragraph 11, reasoning that the provision is purely procedural in character and may not be utilized to vitiate the substantive scheme embraced in §§ 203–205. Furthermore, states AT&T, assuming that the Commission does possess such power under § 4(j), in the context of these proceedings, the action is unjustified. AT&T alleges that inasmuch as inclusion[3] of the suspended tariffs in this proceeding is not mandatory, it is not obligatory to determine the lawfulness of subsequent tariff revisions herein, rather than in separate dockets.

4. AT&T submits that the requirement of special permission is unlawfully arbitrary, owing to the failure of the Commission to indicate the relevant criteria which shall be employed in passing upon requests, or the time frame for action thereon. Moreover, states AT&T, to the extent that the scope of paragraph 11 encompasses non-private line services,[4] such as message telecommunications (MTS) and wide area telephone (WATS), rational foundation for the requirement is lacking, AT&T claims that the lawfulness of the non-private line rates is not in issue herein, and that the filing of tariff revisions for those services would not disrupt the instant proceedings. AT&T maintains that Respondents did not receive fair notice of the action because, on the occasion of the Memorandum Opinion and Order, the Commission had been presented with only one petition, that of the Associated Press (AP), soliciting prior approval for filing, and that petition requested the measure apply only with respect to rate increases. In conclusion, AT&T states that the Commission has not demonstrated satisfactorily that the protection sought for its processes by paragraph 11 is inadequately provided in the regulatory plan embodied in §§ 203–205 of the Act.

5. Western Union, as noted, has filed[5] a petition for reconsideration of our Memorandum Opinion and Order, in support of the petition filed by AT&T. Our Memorandum Opinion and Order was released February 7, 1972, and the filing period for petitions for reconsideration expired March 8, 1972. Western Union submitted its petition sixteen days beyond the filing date. Accordingly, we are dismissing the Western Union petition as untimely.[6]

6. HSNI argues, in its opposition to AT&T, that under the Act a carrier does not possess an unrestrainable right to file tariff revisions.

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[3] See, paragraph 6 of the Memorandum Opinion and Order. 33 F.C.C. 2d 522, 524.

[4] The basis for this assumption derives from a letter transmitted to AT&T from the Chief, Common Carrier Bureau, dated February 17, 1972, pertaining to the February 3, 1972 Order, in substance granting blanket authorization to file tariff revisions in the services under investigation in Docket Nos. 18128 and 18684, which revisions singly or in combination will not have an anticipated effect on the revenues of the service affected of more than plus or minus $100,000 annually. A similar instruction was transmitted by the Chief to Western Union by letter, dated March 9, 1972.

[5] March 24, 1972.

[6] 47 C.F.R. §§ 1.4(b), 1.106(f) (1971).

It asserts that the existence of such a right would render the regulatory process a mockery.

7. MCI urges the Commission to deny the AT&T petition or, alternatively, to defer resolution of the issues in Phase I of Docket No. 19129 until the proceedings in Docket No. 18128 are concluded and, thereupon, to prescribe rates for the entire range of AT&T service offerings. MCI supports HSNI in arguing that a carrier does not have an absolute right, under the Act, to file tariff revisions. It maintains that the right to file may be restricted, pursuant to §§ 4(i)(j) of the Act, in the context of a protracted proceeding such as the instant one. MCI challenges the AT&T petition as premature, stating that the lawfulness of paragraph 11 should be tested subsequent to a denial of a request for special permission.

8. Networks urge reconsideration of paragraphs 7 and 11 of the Memorandum Opinion and Order. Networks maintain that the reach of paragraphs 7 and 11 is unnecessarily broad and would burden efforts to improve and make more efficient the program transmission service offerings. Consequently, Networks request that the Commission dispense with the requirement in instances of a reduction in rates for program transmission services.

9. Turning to a consideration of the allegations raised by AT&T, we reject the argument that a carrier possesses an unrestrainable right to file revisions to its tariff schedules. Under AT&T's contention we could not, for example, reject a tariff for lack of authorization to perform the service offered under the tariff. This is a contention which we have heretofore rejected with the approval of the reviewing court.[7] AT&T supports its position, principally, by reference to *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*,[8] and *Willmut Gas & Oil Co.* v. *Federal Power Commission*.[9] In neither case, however, was the court called upon to decide whether a regulatory agency could impose procedural requirements, through the issuance of orders, upon the filing of tariff revisions. The issue to be resolved in each case was the legal significance of rate revisions filed with the Federal Power Commission, pursuant to Section 4(d)[10] of the Natural Gas Act.[11] Section 4(d) parallels §§ 203(b)(c) of the Communications Act. The construction placed upon the section by *Mobile*,[12] held to be controlling in *Willmut*,[13] states ". . . 4(d) is simply a prohibition, not a grant of power . . . [t]he section says only that a change *cannot* be made without proper notice to the Commission; it does not say under what circumstances a change *can* be made." (Emphasis in the original). Section 203, similarly, details only the procedures a carrier must follow in effectuating rate revisions. For example, it provides: "*No changes shall be made* in charges, classifications, practices . . . except after thirty days' notice to the Commission . . . ."[14] (Emphasis supplied). Further, "*No carrier . . . shall engage* or participate in such communica-

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[7] *Press Wireless, Inc.*, 21 F.C.C. 311; 511 (1956); *aff'd*, 264 F. 2d 372 (D.C. Cir. 1959).

[8] 350 U.S. 332 (1956).

[9] 294 F. 2d 245 (D.C. Cir. 1961); *cert. denied*, 368 U.S. 975 (1962).

[10] 15 U.S.C. 717c(d) (1963).

[11] 52 Stat. 821.

[12] 350 U.S. at 339.

[13] 294 F. 2d at 250.

[14] Section 203(b), 48 Stat. 1070.

tion unless schedules have been filed and published in accordance with the provisions of this Act . . . ."[15] (Emphasis supplied). However, Section 203(b) furnishes this Commission with substantially greater latitude than that provided the Federal Power Commission by Section 4(d) with respect to tariff filing practices. Section 203(b) states: ". . . the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions." No such grant of authority is conveyed by Section 4(d): that section merely permits the Federal Power Commission to allow tariff changes to take effect without thirty days notice; it does not authorize any other modification with respect to the filing requirement. In our judgment, the requirement of special permission represents a necessary and temporary filing modification in full conformance with Section 203(b). Manifestly, the Communications Act does not treat the right of a carrier to file tariffs as an absolute right beyond modifying orders issued for good cause by the Commission.[16] Thus, we cannot conclude that paragraph 11 infringes the statutory scheme of §§ 203–205.

10. We disagree with the contention of AT&T that our Memorandum Opinion and Order represents both an unlawful assertion of rejection authority and a prescription of rates rendered without appropriate hearings. Respondents are not confronted with a moratorium on rate revisions, as evidenced by the advance blanket permission certain filings have received.[17] Our action is a temporary and essential administrative measure, taken to deal with exigent circumstances, prior to a final decision on the merits. *Permian Basin Area Rate Cases, supra; United Gas* v. *Callery Properties*, 382 U.S. 223 (1965); *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (1959). We wish to emphasize that we are not hereby prescribing rates. A decision on whether to grant or deny a request for special permission would not constitute a determination with respect to the lawfulness of the proposed tariffs. It would rather represent a decision on whether it is in the interest of the public and in harmony with the need to protect the integrity of these proceedings to confront, at this late stage, the question of the lawfulness of still further tariff revisions. The decision, furthermore, would not be arbitrary, for Respondents would possess an equitable opportunity to justify submitted requests in accordance with the criteria we express herein. The Court in *Permian* has pronounced the legal standard: "[w]e are, in the absence of compelling evidence that such was Congress' intention, unwilling to prohibit administrative action imperative for the achievement of an agency's ultimate purposes."[18] In light of the circumstances before us, we believe our action is compatible with this standard.

11. Upon reconsideration, we affirm the instruction expressed in paragraph 11 of our Order, on authority of Sections 4(i)(j) of the Act, believing the action both necessary to the execution of our func-

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[15] *Ibid.*

[16] *Cf., Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

[17] See, n. 4 *supra*.

[18] 390 U.S. at 780.

tions and best conducive to the dispatch of our business. See, *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 181 (1968); *Federal Communications Commission* v. *Schreiber*, 381 U.S. 279, 289 (1965); *Federal Broadcasting System* v. *Federal Communications Commission*, 225 F. 2d 560, 566 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 923 (1955); *In the Matter of American Telephone and Telegraph Company*, 23 F.C.C. 2d 503 (1970). Since 1968, Respondents have filed numerous tariff revisions whose lawfulness must be determined herein. With respect to the Telpak rates alone, there are three separate tariff filings (in the years 1968, 1969, 1971) whose lawfulness must be resolved by our final decision. These filings present rate structure and rate component questions which are necessarily intertwined with the fundamental issues involved in these proceedings, namely, determining the appropriate rate level relationship among AT&T's interstate services and how to measure the appropriate contribution to total earnings by each service. It is impossible to effectuate a resolution of such issues on a fragmented basis. As such, these filings present highly complicated and profoundly complex matters which should be addressed in their totality. It is therefore vital to the interests of the parties and of the public to expedite these proceedings. Delay in resolving these proceedings because of the need to investigate the lawfulness of new tariff filings involving essentially the same issues further delays the final resolution of these dockets. These hearings have been in progress over six years. They have severely taxed the resources of this Commission, as well as those of the parties. The record in the consolidated[19] Docket Nos. 18128[20] and 18684[21] incorporating[22] Phase 1–B of Docket No. 16258 is monumental. It comprises hundreds of transcript volumes and thousands of pages of exhibits. Preparation of a recommended decision and the issuance of a decisional Order in this particular circumstance are very formidable undertakings in themselves. They should not be made more difficult, if not impossible, by permitting the Respondents to make uncontrolled recurring revisions of the tariffs in issue which could demand further complicated proceedings in these dockets and unconscionably delay final resolution of these matters. Basic issues inherent in future filings in this area are now being resolved. The requirement of special permission, in this instance, to determine whether new tariff filings would present the same issues already under resolution, protects against further delay.

12. We also envision three other situations involving the operation of paragraph 11 with respect to potential investigations of tariff revisions. First, where the tariff revisions raise the same fundamental questions[23] as those under investigation herein, the investigation of these revisions may proceed in this docket provided it is not disruptive to the conclusion of these proceedings.[24] Second, where the tariff revisions do not raise the same questions as those herein, the investigation

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[19] Adopted June 10, 1970, 23 F.C.C. 2d 503, F.C.C. 70–618.

[20] Institution thereof Adopted April 10, 1968, F.C.C. 68–388.

[21] Institution thereof Adopted September 24, 1969, 19 F.C.C. 2d 1083, F.C.C. 69–1038.

[22] By reference into Docket No. 18128 (Adopted July 29, 1969, 18 F.C.C. 2d 761, F.C.C. 69–842) and into Docket No. 18684 (Adopted February 18, 1970, 21 F.C.C. 2d 495, F.C.C. 70–191).

[23] See, 33 F.C.C. 2d at 524.

[24] See, Memorandum Opinion and Order herein Adopted May 2, 1972, F.C.C. 72–386.

will proceed in a separate docket.[25] Third, where the tariff revisions raise the same fundamental questions as those herein, but also raise novel and substantial questions not related to those herein, a decision will be made on a case by case basis whether the investigation thereof properly belongs in this consolidated docket or in a separate proceeding.[26] It should be emphasized that the investigation herein embraces among other things an inquiry into the rate level relationships of the interstate services furnished by AT&T, including MTS and WATS.[27] Accordingly, it is entirely appropriate that paragraph 11 of the Order apply to these services.

13. We dismiss as without merit the contention of AT&T that Respondents were not fairly afforded notice of our action in adopting the special permission requirement. Respondents possessed the opportunity to comment on the AP petition prior to the issuance of our Memorandum Opinion and Order, and also to express their views through the vehicle of a petition for reconsideration which we have considered fully. With respect to the standard to be applied in reviewing requests for special permission, we believe this has been adequately conveyed to Respondents by paragraph 7 of our previous Order, letters from the Chief, Common Carrier Bureau,[28] and this Memorandum Opinion and Order. To assure Respondents that said requests will be treated with expedition, we are hereby ordering that they be acted upon within thirty days from the date of receipt.

14. Networks' request for reconsideration of paragraph 11 of the Order is denied. There has been nothing uniquely applicable to the program transmission services brought to our attention which would place those services in a special relationship to the issues in these proceedings.

15. At this juncture, we note that Western Union submitted an opposition to the AP petition, referred to in paragraph 4 *supra.*, dated February 3, 1972, the date we adopted our Memorandum Opinion and Order. Owing to the coincidence of the two events, the Order did not indicate receipt and consideration of the opposition. We wish to state, however, that the opposition has been considered in reaching the determinations of this Memorandum Opinion and Order.

16. Accordingly, IT IS ORDERED, That, paragraph 11 of the Order (72–118) under reconsideration herein IS AFFIRMED.

17. IT IS FURTHER ORDERED, That, the petition for reconsideration submitted by Western Union IS DISMISSED as untimely.

18. IT IS FURTHER ORDERED, That, requests by Respondents for special permission to file tariff revisions, in conformance with this Order, shall be acted upon within thirty days of the date of their receipt.

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[25] See, Docket No. 19419, institution thereof Adopted February 3, 1972, 33 F.C.C. 2d 518, F.C.C. 72–119.

[26] See, Order adopted on this date setting for hearing tariffs submitted by Western Union under Transmittal No. 6721.

[27] 23 F.C.C. 2d 503, 507–509 (1970); 21 F.C.C. 2d 495, 497 (1970).

[28] See, n. 4 *supra.*

19. IT IS FURTHER ORDERED, That, the petition for reconsideration and reply by AT&T, the opposition of HSNI and MCI, the response of Networks, and the opposition submitted by Western Union to our previous Order (72–118) are hereby GRANTED to the extent indicated in the foregoing and DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-662

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMERICAN TELEPHONE & TELEGRAPH CO. AND THE ASSOCIATED BELL SYSTEM COS.
Charges for Interstate Telephone Service, Transmittal Nos. 10989 and 11027
Docket No. 19129

MEMORANDUM OPINION AND ORDER

(Adopted July 21, 1972; Released July 24, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND H. REX LEE CONCURRING AND ISSUING STATEMENTS; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER HOOKS ISSUING A SEPARATE STATEMENT.

1. We have under consideration the hearing record in this case, the Initial Decision of the Hearing Examiner issued herein on August 23, 1971, the exceptions and briefs filed by the parties, and oral argument *en banc* before the Commission on October 26 and 27, 1971. We also have under consideration the regulations promulgated by the Price Commission applicable to the authorization of interim rates in Phase I of this proceeding, which regulations became effective on June 1, 1972, and were amended on July 6, 1972. In addition, the Commission noted the position of the Trial Staff and the Respondents, as well as the Hearing Examiner, that it would be appropriate for the Commission, in reaching decision on the allowable rate of return and the amount of any allowable interim rate adjustments, to take account of relevant financial and operating data applicable to the period subsequent to the close of the record. Accordingly, we deem it necessary and appropriate to take official notice of (a) the actual cost to the Bell System of long term debt issued since the close of the record in Phase I and (b) the actual interstate operating results experienced by the Bell System since the close of the record. The data (as of this date) which we propose to officially notice are set forth in the attachment hereto.

2. We are cognizant of the amount of time that has elapsed in this case since the close of the record on June 3, 1971 and the recent promulgation of the Price Commission regulations regarding interim rates. In addition, two of the present seven Commissioners were not members of the Commission at the time of oral argument. Therefore, the Commission is of the view that its resolution of the issues in Phase I of this case will be assisted by a limited re-argument thereof in the context of the changes reflected by the aforementioned financial and operating results which have occurred since the close of the record, and

the Price Commission's regulations currently applicable to any interim rates which may be authorized by our decision herein.

3. Accordingly, IT IS ORDERED, That oral re-argument with respect to the foregoing matters involved in Phase I of this proceeding shall be held before the Commission *en banc* at Washington, D.C., commencing at 9:30 a.m. on September 19, 1972.

4. IT IS FURTHER ORDERED, That each party desiring to participate in such argument shall file with the Commission on or before September 5, 1972, a written notice of intention to do so which shall set forth a summary of its oral argument and the amount of time desired. The order of argument and the specific time allotments will be specified by further order of the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

Bell Telephone System—Total interstate operations

[Millions]

Year (1)	Messages (2)	Gross revenues (3)	Total deductions (4)	Net operating income (5)	Average net investment (6)	Earnings ratio (annual basis) (7)
1971						*Percent*
First quarter	690.3	$1,419.8	$1,149.8	$270.0	$13,236.8	8.16
Second quarter	724.2	1,463.6	1,177.9	285.7	13,525.9	8.45
Third quarter	744.2	1,473.3	1,216.6	256.7	14,091.4	7.29
Fourth quarter	741.0	1,494.8	1,222.3	272.5	14,367.7	7.58
Year 1971	2,899.7	5,851.5	4,766.6	1,084.9	13,805.5	7.86
1972						
First quarter	759.9	1,549.3	1,272.7	276.6	14,630.0	7.56
April	253.7	518.3	422.2	96.1	14,880.5	7.75
May	272.6	544.6	444.2	100.4	15,153.6	7.95
Five months 1972	1,286.2	2,612.2	2,139.1	473.1	14,784.9	7.68

Percent increases over same periods of preceding year and average revenue per message

Year (1)	Messages (2)	Gross revenues (3)	Total deductions (4)	Average net investment (5)	Average revenue per message (6)
1971	*Percent*	*Percent*	*Percent*	*Percent*	
First quarter	7.6	11.6	9.5	12.1	$1.92
Second quarter	6.1	10.2	7.3	11.3	1.91
Third quarter	6.3	10.6	10.1	12.9	1.88
Fourth quarter	7.4	11.2	11.1	12.7	1.92
Year 1971	6.8	10.9	9.5	12.3	1.91
1972					
First quarter	10.1	9.1	10.7	10.5	1.94
April	6.6	6.8	8.3	11.4	1.92
May	14.6	13.1	14.3	11.2	1.91
Five months 1972	10.3	9.5	10.9	10.9	1.93

NOTE: Reflects the Commission's rate base determinations in its Order of 9/13/67 in Docket No. 16258.

Bell system long-term debt cost

Date issued:	Cost (percent)
1971 average	7.49
January 5, 1972	7.27
January 25, 1972	7.37
February 15, 1972	7.30
April 10, 1972	7.53
May 2, 1972	7.45
May 22, 1972	7.39
June 13, 1972	7.51

CONCURRING STATEMENT OF COMMISSIONER ROBERT E. LEE

In deference to my colleagues who wish to more meaningfully participate in the ultimate resolution, I concur in the Memorandum Opinion and Order that requires further oral argument to amplify and update the long and involved record in this case. Obviously the broadest participation by all the Commissioners is desirable if not necessary.

However, had I had my "druthers" I would have preferred an immediate decision establishing a reasonable rate of return consistent with the economic and financial realities in our economy at this particular time in history.

Imbedded cost of debt has risen a drastic 50% from our last examination of AT&T in 1967 from 4% to 6%. Current cost of debt for triple A bonds issued by Bell is approximately 7½%. All other costs, in recent years, have spiralled substantially upwards i.e. labor, equipment, etc.

Appropriate adjustment in interstate rates should relieve the very real pressure that now exists on the Bell System for additional revenues.

Early resolution of the problem is appropriate.

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I concur in the decision to schedule a limited reargument of the Phase I issues in Docket No. 19129 only because of the announced desire of two of the present Commissioners who were not members of this agency at the time of the initial oral argument in October, 1971. I would prefer to proceed to a final resolution of the rate of return phase of the proceeding now since the Commission may take official notice of relevant financial and operating data and Price Commission regulations applicable to the period subsequent to the close of the hearing record and since both the rate-paying public and the Bell System are entitled to an early decision on Phase I. Nevertheless, I accede to the wishes of the most recent appointees to the Commission to have a limited reargument, and it is for that reason alone that I concur in the present action.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The telephone company would like to increase our phone bill a little—say, about $1 billion a year.*

The FCC, pleased to do what it can to help, held the fastest hearing on record to accommodate.

It was decided by the Hearing Examiner after a rushed hearing of but 33 days, on August 31, 1971. It was argued orally before the Commission on October 26 and 27, 1971. Since then, changing signals from the Price Commission have prevented the FCC from acting. Now the Price Commission regulations have been available for a month, and the immediate problem confronting the Commission is what to do between now and November with the "expedited" case before it. What more can we do?

We can hold another oral argument, that's what. So we decide today by a vote of five to one, a skimpy order with very little explanation, and a press release.

Ironically, there *would* be good reason to reopen the record in this case, send it back to the Hearing Examiner, and hold another hearing. The record in the rate-of-return proceeding was closed in June, 1971. In August, 1971 President Nixon imposed his New Economic Policy. It was this policy which created the Price Commission, and the Price Commission which created the new standards for public utility regulation now applicable to this case.

Public utility rate regulation is, in short, a whole new ball game.

The Commission has three choices before it.

One would be to admit that the record before it *is* stale, because of the extraordinary and unanticipated economic events that have occurred since Bell requested its massive rate increase, and the need for that increase was tested in a hearing. Having made that admission, this case then could be—I would urge, must be—remanded for further evidentiary proceedings.

What is the "New Economic Policy?" Can regulated industries—which constitute roughly 20% of the gross national product—be *exempt* from any inflation controls worthy of the name? If not, what standards should this agency, and the Price Commission apply—beyond (or instead of) those traditionally used in this field? Are there special peculiarities of telephone regulation that require special treatment? Must we now examine the recent increases in AT&T executives' compensation? Wage hikes? What has been the *effect* of the New Economic Policy? Can AT&T now raise capital at lower interest rates than it projected in 1971 prior to the Policy? Have its cost increases leveled out?

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*The "$1 billion" figure is, of course, an approximation. It is, however, a fair approximation which can be substantiated by any one of a number of approaches.

The last FCC rate hearing resulted in an authorization, in 1967, of a 7.0 to 7.5% rate of return. Bell is now earning a system-wide rate of return of about 7.5%. If that rate of return is increased to 8.5%, ratepayers will pay an additional $930 million a year.

The $930 is computed as a relatively simple mathematical exercise. The "rate of return" is a return on "rate base"—the company's property, its capital investment. That rate base (depreciated) is about $46–47 billion. A 1% return would be, therefore, say, $465 million. That is, it *would* be $465 million but for the fact the return is *after* taxes. Since taxes are about 50%, it means the rate payers must pay twice as much—or $930 million—in order for AT&T to earn a 1% increase.

In fact, *prices* are raised to levels that would create even *more* than $930 million if usage remained constant; because prices are raised, however, usage declines somewhat, and therefore "only" $930 million additional revenue is created.

This is by no means an exhaustive or carefully conceived list of the new issues before us, but it gives a sense of their range and sophistication. These are simply not the kinds of questions that can be resolved in a few hours of "oral argument" by lawyers before Commissioners. An oral argument before an appellate body comes *after* a hearing before a trial tribunal—in this case an FCC Hearing Examiner. The oral arguments are based—in fact, and in law—upon the evidence of record in that hearing. In this case that would be a hearing consuming many days, a hearing that would require the testimony of many economists and other experts, a hearing that would require the restructuring of almost the entire case originally put before the Examiner by the FCC Trial Staff and by AT&T. After that hearing the Examiner would prepare an initial decision (as he has on the hearing already held), and the Commission *then* would be ready to hear oral argument on that record and decision (as it already did last October).

The problem with this procedure, of course, is that it takes time. During the years when modest rate *decreases* were ordered by the FCC, neither AT&T nor the FCC were anxious to expedite matters—the longer the hearings lasted, the longer consumers went on paying the higher, unwarranted rates. And the hearings went on for years. Now that AT&T thinks it may get a rate *increase*—perhaps because we already permitted a $250 million increase in January, 1971 *without* a hearing, and the states have approved $1.5 billion in increases since January, 1969—everyone's suddenly taken a great interest in expediting rate cases. So the prospect of sending this case back to the Examiner to do over is an anathema to the AT&T/FCC.

And yet, if the majority really wants an updated and current record, it is the only way it can be obtained.

A second choice would be to decide the case now, based on the old record. We can take official notice of any facts likely to be mentioned in a second oral argument, such as updated operating results, decisions by other regulatory agencies and current debt costs to AT&T. The probable effects of any Commission decision now would be additional payments by consumers of around $1 billion per year—once those effects were felt fully throughout the economy and the various state commissions. The majority is understandably reluctant to issue such a decision when the Nixon price control program is under increasing attack as being ineffectual, and biased in favor of business and against the working man and consumer—however warranted (or not) AT&T's case for the increase may be. It would simply create terrific pressures on the Nixon Price Commission either to interfere and stop the decision, or to let it go into effect—with the risk of further criticism.

So the majority opts for a holding action—an oral argument at which everyone but the Commissioners agree nothing new will be learned that could not be gained by simply rereading the transcript of the October, 1971 argument. Bell will simply have to be mollified about the additional delay. But that should be relatively easy. There will be much less public and press interest in a massive rate increase after November, thereby taking pressure off of the Price Commission to reject whatever the FCC ultimately does. And the odds are good that whatever Commission decision comes months from now will mean even more money and higher rates for Bell—as hard to believe as that may now seem—than if the Commission decided the case this week.

Last December, the FCC, in an uncontrollable fit of candor, announced to the world it was simply calling off the hearings on AT&T's costs of doing business and the value of its investment (on which the rate of return is paid). See, "Why Ma Bell Believes in Santa Claus," Saturday Review, March 11, 1972, pp. 57–60. (Those hearings—which I believe simply must be resolved prior to this case as a matter of law, morality and common sense—have been hanging around for years and are still unresolved.) The news they were to be cancelled entirely was met with stunned outrage by the Congress, public and press.

The FCC quickly retreated, reinstated the hearings—and then failed to do much about them. The lesson, however, has not been lost upon the Commissioners. No more will candor raise its naive head around these halls.

Mr. Dooley wrote:

> No matther whether th' constitution follows th' flag or not, th' supreme coort follows th' iliction returns.

This agency, clearly, is not the Supreme Court, and the motives of the majority may be pure as snow. But the net effect of today's decision—whether or not it follows the last election returns—may very well help to influence the next ones.

Needless to say, I will be delighted to be proved wrong in my reading of the futility of the majority's action to achieve any save political results. I'll wait to see. Meanwhile, I dissent.

The FCC only considers "interstate" rates (long distance phone calls out of state), some 30% of AT&T's revenue. The "system-wide" impact of its finding comes about because AT&T uses the FCC-authorized rate of return figure in arguing for rate increases before state commissions.

The $1 billion figure can also be supported by the recent history of the state commissions. Since January, 1969 they have approved $1.5 billion in rate increases for AT&T; an additional $1.1 billion in requested rate hikes are now pending nationally.

We do know roughly how big a price rise is needed to increase earnings. For example, the $250 million increase in earnings this agency permitted Bell to achieve in January, 1971 required a straight price rise of $384 million—a 7.8% price increase. To that has been added a $36 million increase in earnings from private line users. To reach 8.5% interstate would require an additional $160 million in earnings, achieved by a price rise of $246 million—*in interstate alone*—if the increase is placed entirely on the small user, as was the January, 1971 increase. This is a price rise of about 4.4%.

The FCC has *not* decided what the rate of return should be. The Trial Staff urged 7.8 to 8.3%. The Hearing Examiner awarded a range of 7.9 to 8.8%, with 8.25% as the fixed rate. Bell is, of course, anxious to increase his award. My use of 8.5% is hypothetical and arbitrary and in no sense a "finding" based on the record (although it is neither patently unreasonable nor necessarily unlikely); it is merely a simple mathematical way to illustrate with particulars the general issues before us.

SEPARATE STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

Today I cast my first vote as Commissioner by concurring in scheduling the above matter for oral argument. Since my personal reasons go beyond those stated in the Commission order, I feel compelled to state my rationale.

This case commenced nearly two years ago.[1] More than 25 separate parties have appeared in this proceeding and the record in this case is spread over 18 volumes (approximately 9,000 pages) of testimony and exhibits. The matter is further complicated by a number of pertinent rulings of the Price Commission. I have been a member of this Commission less than three weeks. I do want to emphasize (as I have stressed to the Commission itself) that even with the benefit of oral argument and additional time to familiarize myself with the record as well as ratemaking proceedings before this Commission generally, I cannot now say, nor does this vote signal, that I will ultimately vote on the merits of this case. However, I do welcome the opportunity for oral argument[2] and my first opportunity to interrogate the parties.

I feel a compelling obligation not to bypass the opportunity to vote on a matter of this magnitude, provided the oral argument and my review of the record compiled by the hearing examiner supplies me with the necessary information to make a reasoned decision.

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[1] AT&T Transmittal No. 10989, filed November 20, 1970.

[2] The consumers' interest is unaffected by this action inasmuch as all interim rates currently being charged by AT&T are subject to the accounting and refund provisions of 47 U.S.C. § 204. Hence, any rate increase since November 20, 1970, determined to be unjust by the Commission, would be refunded, with interest, to the subscribers.

F.C.C. 72-539

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH Co., LONG LINES DEPARTMENT Revisions of Tariffs F.C.C. No. 259 and No. 260	Docket No. 19419

MEMORANDUM OPINION AND ORDER

(Adopted June 21, 1972; Released June 26, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. The Commission has before it tariff revisions filed by American Telephone and Telegraph Company (AT&T), scheduled to become effective July 3, 1972, in substitution for and cancelling tariff schedules filed under Transmittal Nos. 11345, 11346, 11353, and 11354 which, by Memorandum Opinion and Order (72-119), adopted February 3, 1972, and released February 7, 1972, we had suspended and set for investigation in this docket, including cancellations, amendments, or reissues thereof. AT&T applied for special permission to file the revised tariffs, whose effective date coincides with that scheduled for the cancelled tariffs, pursuant to Section 61.153 of the Commission's Rules, and paragraph 11 of our Memorandum Opinion and Order (FCC 72-118) in the consolidated Dockets Nos. 18128 and 18684, adopted February 3, 1972, and released February 7, 1972. The Chief, Common Carrier Bureau, granted AT&T's application, under delegated authority, and the revised tariff schedules were subsequently filed.[1]

2. The revised tariff schedules filed by AT&T represent modifications in Tariffs F.C.C. No. 259 and 260. In summary, the revised tariff schedules would provide: a reduction in charges in Tariff F.C.C. No. 260 for 200 Series DATA-PHONE Data Sets suitable for conditioning signals at rates of 2000 and 2400 bits per second; regulations and rates in Tariff F.C.C. No. 260 for a 200 Series DATA-PHONE Data Set for combined sending and receiving and suitable for conditioning signals at rates up to 1800 bits per second in sequence, and for the provision of Multi-Channel Data Station Equipment without a Data Line Concentrator; regulations and rates in Tariffs F.C.C. No. 259 and No. 260 for automatic data access arrangements.

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[1] This grant was made subject to the condition that AT&T provide actual notice to all affected customers of the fact that the lawfulness of these revised rates is under formal hearing and investigation and that the rates are subject to revision after hearing.

3. In view of these developments, we are continuing the hearings in this proceeding until such time as interested persons have had an opportunity to study the new filings and comment thereon. After receipt of those further pleadings, if any, we shall take such appropriate further action as is then indicated. Said further pleadings shall be filed in conformance with the following time periods: petitions challenging the lawfulness of the revised tariff schedules shall be filed within 30 days of the date of release of this Memorandum Opinion and Order; oppositions thereto shall be filed within 15 days of the filing of the challenging petitions; replies to oppositions shall be filed within 7 days of the filing of oppositions.

4. Accordingly, IT IS ORDERED, That, pleadings treating the lawfulness of tariff revisions filed by AT&T in Tariffs F.C.C. No. 259 and No. 260, effective July 3, 1972, shall be filed within the pleading periods set forth hereinabove.

5. IT IS FURTHER ORDERED, That, the hearings in the instant proceeding shall be continued pending our further action following the submission of pleadings addressing the lawfulness of the tariff revisions.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-699

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
BIRCH BAY BROADCASTING CO., INC., RADIO
STATION KARI, BLAINE, WASH.
Concerning Time Brokerage Sale of Time

JULY 26, 1972.

BIRCH BAY BROADCASTING CO., INC.,
Licensee of Radio Station KARI,
P.O. Box X,
Blaine, Wash. 98230

GENTLEMEN: Information obtained during the Commission's recent field investigation (May 30–June 3, 1972) into the affairs of Station KARI, Blaine, Washington, indicates that the station does not maintain adequate control over its foreign language broadcasts. KARI broadcasts six foreign language programs each week (Saturdays and Sundays) during time sold to "time brokers" for resale, in addition to numerous other foreign language programs (religious). You indicated during the field investigation that the station had made arrangements about one year ago with persons to monitor the foreign language broadcasts on a voluntary basis. You indicated that the six brokered foreign language programs were monitored "every couple of months" and that you did not "worry" about the other foreign language programs because they were religious programs. You also stated that the monitors of the six programs had been instructed to look for "anything peculiar and unusual, such as rabble rousing or the overthrow of our government" and "to avoid political matters" but that they were given no written instructions; that you had instructed one and possibly two of the monitors as to the purpose of monitoring; that James McGechaen, KARI salesman located in Vancouver, British Columbia, had instructed the monitors of the remaining brokered programs, and that the monitors submitted written reports whenever they monitored the station.

At the time of our investigation, your file contained only six monitor reports for 1971 and three for 1972, purporting to cover the six brokered programs. Of the reports, four covered broadcasts of the same program on October 17, 18, 1971, and March 18, 19, 1972; two covered another program in September 1971 and January 1972; two covered a third program on November 6 and 8, 1971; and one covered another program on October 2, 1971. There were no reports in the file for two of the programs.

Mr. McGechaen stated in substance as follows:

> When lining up these people (monitors), my instructions were to report to me on the program content, such as music, commercial content, comments, if any, regarding the community—I would say general comments.
>
> It's made very clear to the people doing the programs that they should avoid political comment or any comment detrimental to the welfare of the United States. We also make clear to them that we don't want them to get involved in controversial matters. I have not instructed the monitors to check programs to see if the people doing the programs get into controversial matters. I have not instructed the monitors to watch or listen for personal attacks, because I hadn't though of that. Besides, I know my people doing the shows and can rely on them not attacking anyone on the air. I have told the operators of the programs to avoid controversial matters because then we would have to give equal time. I have instructed monitors to report any lotteries, also.

The Commission in its Public Notice of March 30, 1967 (FCC 67–368 Mimeo 95960) reminded its licensees of their responsibility to maintain adequate control over all programming, including that in foreign languages. The Notice further stated:

> Essential to the exercise of proper licensee responsibility in this matter is knowledge of the content of such broadcasts. Commission inquiry reveals that a number of licensees have no familiarity with the foreign languages and, thus, no knowledge of the content of such broadcasts. They explain their practices as follows: (1) they permit only persons of established reputation for judgment and integrity to use their facility; (2) copies of commercial announcements used on foreign language programs must be submitted in advance in English translation; (3) recordings of all programs are made and retained for future reference. We do not regard such procedures, in and of themselves, as sufficient to insure licensee knowledge of and control over foreign language programming.
>
> Licensee responsibility requires that internal procedures be established and maintained to insure sufficient familiarity with the foreign languages to know what is being broadcast and whether it conforms to the station's policies and to requirements of the Commission's rules.
>
> Failure of licensees to establish and maintain such control over foreign language programming will raise serious questions as to whether the station's operation serves the public interest, convenience and necessity.

From the above, it appears that your procedures have been grossly inadequate to "insure sufficient familiarity with foreign languages to know what is being broadcast and whether it conforms to the station's policies and to requirements of the Commission's rules."

The engaging of "voluntary" monitors who apparently are unpaid in itself raises questions as to the regularity of the monitoring that may be expected and the degree of attention that will be given the programs by the monitors. The fact that your file contained monitoring reports on only nine brokered broadcasts during almost 18 months indicates that the programs were rarely monitored, or even if monitored, that you were not sufficiently interested in ascertaining the nature of the broadcasts to require reports from the monitors.

It also appears that you have not adequately informed the monitors of your programming policies and the Commission's rules and policies relating to programming, so that they would be able to report to you possible infractions of rules or deviations from policy. For example, although Mr. McGechaen states that he instructed the monitors to report lottery broadcasts, he apparently did not give any instructions regarding, for example, the fairness doctrine, personal attacks, obscene, profane or indecent language, or false or misleading advertising. Moreover, we do not regard Mr. McGechaen's instructions to the foreign language broadcasters "to avoid controversial matters" as serving the public interest, since it is one of a licensee's prime responsibilities to present discussion of public issues. *Editorializing Report*, 13 FCC 1246 (1949); *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367 (1969).

Finally, it should be pointed out that the fact that a program is classified as religious does not relieve the licensee of responsibility for familiarizing itself with the content of the program to insure that it complies with the licensee's policies and the Commission's rules and policies.

In light of the above, it appears that you have been seriously delinquent in exercise of the responsibility required of a licensee to insure knowledge of and control over its programming. You are requested to submit within 20 days of the date of this letter a detailed statement as to your future policies and procedures to insure such knowledge and control. Your response and the operation of the station during the remainder of the current license term will be considered in connection with your next application for renewal of license of KARI.

Chairman Burch absent; Commissioner Hooks not participating.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-690

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 0, SUBPART B, AND PART 78, SUBPARTS B AND D, OF THE COMMISSION'S RULES AND REGULATIONS CONCERNING DELEGATIONS OF AUTHORITY TO THE CHIEF, CABLE TELEVISION BUREAU, PROCEDURES IN THE CABLE TELEVISION RELAY SERVICE, AND RELATED MATTERS

ORDER

(Adopted July 26, 1972; Released August 1, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONERS JOHNSON AND REID CONCURRING IN THE RESULT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. In the *Cable Television Report and Order*, FCC 72-108, 37 Fed. Reg. 3252, released February 3, 1972, we renamed the Community Antenna Relay Service as the Cable Television Relay Service and rearranged the rules, with slight modifications, in a new Part 78. We have examined the new CAR rules in the light of experience, and have concluded that certain modifications in procedures and various editorial revisions are desirable.

2. First, the Commission has received several requests for special temporary authorizations in the Cable Television Relay Service in recent months. These authorizations are usually of a routine nature and require prompt disposition; hence, we are amending Section 0.289 of the Commission's rules to delegate authority to the Chief, Cable Television Bureau, to act on such requests. This delegation parallels similar delegations to the Chief, Common Carrier Bureau, and the Chief, Broadcast Bureau. At the same time, we are amending the rules (Section 78.33) to clarify the procedure to be used in applying for special temporary authorization.

3. Second, we are adding a rule (Section 78.35) reiterating the requirement of Section 310(b) of the Communications Act that no assignment of the license or construction permit of a CAR station or transfer of control of a CAR licensee or permittee may occur without prior Commission authorization, and are amending Section 0.289 to delegate additional authority to the Chief, Cable Television Bureau, to act on unopposed applications for assignment or transfer of control.

4. Finally, we have made editorial revisions in Sections 78.11 (permissible service), 78.19 (interference), 78.103 (emissions and band-

width), and 78.107 (equipment and installation), and are adding new Sections 0.290 (record of actions taken), 78.16 (who may sign applications), 78.17 (amendments of applications), 78.20 (acceptance of applications; public notice), 78.21 (dismissal of applications), and 78.22 (objections to applications). In general, the latter new sections codify previously applicable procedures that are found in Part 1 of the Rules.

5. Since these amendments are either editorial or relate to Commission organization, procedures, or practice, or restate existing requirements, the prior notice provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C. 553 do not apply. Similarly, since the amendments are essential elements of our over-all regulatory program for cable television relay stations, delay in their implementation would confuse the public and would be contrary to the public interest.

6. Authority for the rule amendments adopted herein is contained in Sections 2, 3, 4(i) and (j), 5(b) and (d), 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

7. Accordingly, IT IS ORDERED, That effective August 8, 1972, Parts 0 and 78 of the Commission's Rules and Regulations are AMENDED as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

APPENDIX

Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 0—Commission Organization

1. In § 0.289, paragraph (a) is revised and a new paragraph (d) is added, as follows:

§ 0.289 Authority delegated.

(a) The Chief of the Cable Television Bureau, in coordination with the Broadcast Bureau, is delegated authority to act on the following applications for authorizations in the Cable Television Relay Service, if such applications comply fully with the requirements of the Communications Act, the provisions of Part 78 of this chapter, and Commission policy and standards; if no mutually exclusive application has been filed; and if no petition to deny or other substantial objection to the application has been filed:

(1) Applications for construction permits for new stations;
(2) Applications for licenses to cover construction permits;
(3) Applications for modification, assignment, transfer of control, or renewal;
(4) Applications for assignment or transfer of control filed pursuant to § 78.35(b) of this chapter.

* * * * * * *

(d) The Chief of the Cable Television Bureau, in coordination with the Broadcast Bureau, is delegated authority to act on requests for temporary authority for special operations.

2. A new § 0.290 is added, as follows:

§ 0.290 Record of actions taken.

History cards, system or station files, and other appropriate files of the Cable Television Bureau are designated as the Commission's official records of actions taken by the Chief of the Cable Television Bureau pursuant to authority delegated to him.

B. Part 78—Cable Television Relay Service

1. In § 78.11, paragraph (i) is amended, as follows:

§ 78.11 Permissible service.

* * * * * * *

(i) The license of a CAR pickup station authorizes the transmission of program material, and related communications necessary to the accomplishment of such transmission, from the scenes of events occurring in places other than a cable television studio, to the studio or headend of its associated cable television system, or to such other cable television systems as are carrying the same program material. CAR pickup stations may be used to provide temporary CAR studio to headend links or CAR circuits consistent with this part without further authority of the Commission: *Provided, however,* That prior Commission authority shall be obtained if the transmitting antenna to be installed will increase the height of any natural formation or manmade structure by more than 20 feet and will be in existence for a period of more than 2 consecutive days; *And provided, further,* That if the transmitting equipment is to be operated for more than one day outside of the area to which the CAR station has been licensed, the Commission, the Engineer in Charge of the district in which the station is licensed to operate, and the Engineer in Charge of the district in which the equipment will be temporarily operated shall be notified at least one day prior to such operation. If the decision to continue operation for more than one day is not made until the operation has begun, notice shall be given to the Commission and the relevant Engineers in Charge within one day after such decision. In all instances, the Commission and the relevant Engineers in Charge shall be notified when the transmitting equipment has been returned to its licensed area.

2. A new § 78.16 is added as follows:

§ 7816 Who may sign applications.

(a) Applications, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of government entities shall be signed by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, Title 18, Section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to Section 312(a)(1) of the Communications Act of 1934, as amended.

3. § 78.17 is renumbered as § 78.18, and a new § 78.17 is added, as follows:

§ 78.17 Amendment of applications.

Any application may be amended as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the application, merely by filing the appropriate number of copies of the amendment in question duly executed in accordance with § 78.16. If a petition to deny has been filed, the amendment shall be served on the petitioner.

4. In § 78.19, paragraphs (c) and (d) [derived from former § 78.21] are added, as follows:

§ 78.19 Interference.

* * * * * * *

(c) *Radio Astronomy and Radio Research Installations.* In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, an applicant for authority to construct a cable television relay station, except a CAR pickup station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39°15′N on the north, 78°30′W on the east, 37°30′N on the south and 80°30′W on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission, and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such application, the Commission will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(d) *Location on Government land.* Applicants proposing to construct a cable television relay station on a site located under the jurisdiction of the U.S. Forest Service, U.S. Department of Agriculture, or the Bureau of Land Management, U.S. Department of the Interior, must supply the information and must follow the procedure prescribed by § 1.70 of this chapter.

5. A new § 78.20 is added, as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, D.C. are dated upon receipt and then forwarded to the Cable Television Bureau, where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

(b) Acceptance of an application for filing means only that it has been the subject of a preliminary review by the Commission's administrative staff as to completeness. Applications which are determined to be clearly not in accordance with the Commission's rules or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing, or if inadvertently accepted for filing, will be dismissed. Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.

(c) The Commission will give public notice of all applications and major amendments thereto which have been accepted for filing. No application shall be acted on less than thirty (30) days from the date of public notice.

6. Section 78.21 is deleted. The provisions of this section are included in revised § 78.19. A new § 78.21 is added, as follows:

§ 78.21 Dismissal of applications.

(a) Any application may, on request of the applicant, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the application. An applicant's request for the return of an application will be regarded as a request for dismissal.

(b) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the application.

7. A new § 78.22 is added, as follows:

§ 78.22 Objections to applications.

(a) Any party in interest may file a petition to deny any application (whether as originally filed or as amended) no later than thirty (30) days after issuance of a public notice of the acceptance for filing of any such application or amendment thereto. Petitions to deny shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.

(b) The applicant may file an opposition to any petition to deny, and the petitioner may file a reply to such opposition (see § 1.45 of this chapter), in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof.

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, other than a license to cover a construction permit, any person may file informal objections to the grant. Such objections may be submitted in letter form (without extra copies) and shall be signed by the objector. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of this chapter shall not be applicable to any objections duly filed pursuant to this paragraph.

8. A new § 78.33 is added, as follows:

§ 78.33 Special temporary authority.

(a) Notwithstanding the requirements of §§ 78.15 and 78.20, in circumstances requiring immediate or temporary use of facilities, a request may be made for special temporary authority to install and operate new equipment or to operate licensed equipment in a manner different from that authorized in a station license. Any such request may be in letter form, and shall be submitted in duplicate: *Provided, however,* That in cases of emergency involving danger to life or property or due to damage to equipment, such request may be made by telephone or telegraph with the understanding that a written request shall be submitted within ten (10) days thereafter.

(b) Special temporary authority may also be requested to conduct a field survey to determine necessary data in connection with the preparation of a formal application for installation of a radio system under this part. Such authority may be granted to equipment suppliers and others who are not operators of cable television systems, as well as to cable operators, to conduct equipment, program, service, and path tests.

(c) Any request for special temporary authority shall be clear and complete within itself as to the authority requested. In addition, such requests shall contain the following information:

(1) Name, address, and citizenship of applicant;

(2) Grounds for special action, including a description of any emergency or damage to equipment;

(3) Type of operation to be conducted;

(4) Purpose of operation;

(5) Time and date of proposed operation;

(6) Class of station and nature of service;

(7) Location of station;

(8) Equipment to be used, specifying manufacturer, model number, and number of units;

(9) Frequency or frequencies desired, consistent with § 78.18: *Provided, however,* That in the case of events of widespread interest and importance that cannot be transmitted successfully on these frequencies, frequencies assigned to other services may be requested on a showing that operation thereon will not cause interference to established stations; *And Provided, further,* That in no case will a cable television relay operation be authorized on frequencies employed for the safety of life and property;

(10) Plate power input to final radio frequency stage;

(11) Type of emission;

(12) Description of antenna to be used, including height. In the event that the proposed antenna installations will increase the height of any natural formation, or existing manmade structure, by more than twenty (20) feet, a vertical plan sketch showing the height of the structures proposed to be erected, the height above ground of any existing structure, the elevation of the site above mean sea level, and the geographic coordinates of the proposed sites shall be submitted with the application.

(d) Except in emergencies involving safety of life or property or due to damage to equipment, a request for special temporary authority shall be filed at least ten (10) days prior to the date of proposed operation, or shall be accompanied by a statement of reasons for the delay in submitting such request.

(e) If the Commission finds that special temporary authority is in the public interest, it may grant such authority for a period not exceeding ninety (90) days, and, on a like finding, may extend such authority for one additional period not to exceed ninety (90) days.

9. A new § 78.35 is added, as follows:

§ 78.35 Assignment or transfer of control.

(a) No assignment of the license or construction permit of a cable television relay station or transfer of control of a CAR licensee or permittee shall occur without prior Commission authorization.

(b) If an assignment or transfer of control does not involve a substantial change of interests, the provisions of §§ 78.20(c) and 78.22, concerning public notice and objections, shall be waived.

10. In § 78.103, paragraph (a) is amended, as follows:

§ 78.103 Emissions and bandwidth.

(a) A cable television relay station may be authorized to employ any type of emission, for which there are technical standards incorporated in Subpart D of this part, suitable for the simultaneous transmission of visual and aural television signals.

* * * * * * *

11. In § 78.107, paragraph (b) is amended, as follows:

§ 78.107 Equipment and installation.

* * * * * * *

(b) Each transmitter authorized for use in the Cable Television Relay Service (other than a CAR pickup station) must be of a type that has been type accepted pursuant to Part 2 (Subpart F) of this chapter, as capable of meeting the requirements of §§ 78.17, 78.101, 78.103, 78.111, and 78.115.

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F.C.C. 72-709

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re:
CABLEVISION OF DUNCAN, DUNCAN, OKLA.
Request for Waiver of Section 76.91 of the Commission's Rules
SR-117114 (OK070), SR-127103, SR-117115, SR-117108

MEMORANDUM OPINION AND ORDER

(Adopted August 2, 1972; Released August 4, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, ACTING CHAIRMAN; H. REX LEE AND WILEY ACTING AS A BOARD.

1. Cablevision of Duncan operates a cable television system at Duncan, Oklahoma, which provides its subscribers with the following television signals: KTEN (ABC, CBS, NBC), Ada, Oklahoma; KXII (NBC, CBS), Ardmore, Oklahoma; KSWO-TV (ABC), Lawton, Oklahoma; KETA (Educ.), KOCO-TV, (ABC), KWTV (CBS), and WKY-TV (NBC), Oklahoma City, Oklahoma; and KAUZ-TV (CBS) and KFDX-TV (NBC), Wichita Falls, Texas. On September 22, 1971, and November 13, 1971, Bass Brothers Telecasters, Inc., licensee of Station KAUZ-TV, Wichita Falls, Texas, requested program exclusivity pursuant to Section 74.1103 [1] of the Commission's Rules vis-a-vis Television Broadcast Station KWTV, Oklahoma City, Oklahoma. KSWO-TV, Inc., licensee of Station KSWO-TV, Lawton, Oklahoma, requested program exclusivity pursuant to Section 74.1103 of the Rules vis-a-vis Television Broadcast Station KOCO-TV, Oklahoma City, Oklahoma and KTEN, Ada, Oklahoma. Station KAUZ-TV places a predicted Grade B contour over Duncan and Station KWTV is a distant signal. Station KSWO-TV places a predicted Grade A contour over Duncan, Station KOCO-TV places a predicted Grade B contour over the city, and KTEN is a distant signal.

2. On November 24, 1971, KAUZ-TV filed a "Petition for Order To Show Cause Pursuant To Section 74.1109 of the Commission's Rules" directed against Cablevision of Duncan, asking that it be required to show cause why it should not be ordered to cease and desist from operating its cable system in violation of Section 74.1103(e) of the Commission's Rules. On November 11, 1971, KSWO-TV filed a "Petition For Issuance of Order To Show Cause and For Temporary Relief Pursuant to Section 74.1109 of The Commission's Rules" seeking the same type of cease and desist order sought by KAUZ-TV. On December 5, 1971, Cablevision of Duncan filed a "Petition For Special

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[1] Now Section 76.91 of the Rules.

Relief" requesting a waiver of the program exclusivity requirement of Section 74.1103(e) of the Rules vis-a-vis Stations KWTV, and KTEN.[2] Both KAUZ–TV and Cablevision of Duncan oppose each other's petition. On November 24, 1971, Cablevision of Duncan filed a "Petition For Special Relief" requesting waiver of the program exclusivity requirement of Section 74.1103(e) of the Rules vis-a-vis Station KOCO–TV, Oklahoma City, Oklahoma.[3] Both KSWO–TV and Cablevision of Duncan oppose each other's petition.

3. In support of its waiver request vis-a-vis KWTV and KOCO–TV, Cablevision of Duncan argues that viewers in Duncan have a greater community of interests with Oklahoma City than with Wichita Falls, Texas or Lawton, Oklahoma. This argument must be rejected because the *Second Report and Order in Docket 14895 et al.*, 2 FCC 2d 725 (1966), explains the Commission's reasons for requiring program exclusivity when a community is within the predicted contours of a television station, and these reasons do not depend on community orientation or ties.

4. In support of its waiver petition vis-a-vis KWTV, Cablevision argues: (a) that since KAUZ–TV has shown no financial need for exclusivity, deletion of another signal to provide exclusivity would disrupt viewing habits without bestowing a benefit on KAUZ–TV, (b) that the provision of program exclusivity would be discriminatory against cable subscribers since Oklahoma City signals are available off-the-air, (c) that KAUZ–TV's request for program exclusivity has not fully complied with the requirements of Section 74.1103(f) of the Rules in describing which television signals it wishes to be protected against, (d) that the Commission should not act in this matter until it takes action on its proposal to require simultaneous rather than same day program exclusivity,[4] and (e) that if Duncan is required to provide KAUZ–TV with program exclusivity vis-a-vis KWTV, that station will be discriminated against since the other Oklahoma City network signals place a predicted Grade B contour over Duncan and are thus not subject to program exclusivity with regard to other predicted Grade B signals.

5. We rule on Duncan's arguments contained in paragraph four as follows: (a) The *Second Report and Order, supra*, explains why a television station is entitled to program exclusivity against lower priority stations without demonstrating special need; (b) the availability of signals off-the-air is irrelevant to the reasons set forth in the *Second Report and Order, supra*, for requiring program exclusivity; (c) KAUZ–TV now appears to be providing proper notice; (d) Under Section 76.93 of the Commission's Rules (simultaneous program exclusivity) Duncan's obligation to provide exclusivity to KAUZ–TV would still remain; and (e) Duncan has failed to present sufficient facts to support a waiver under these circumstances. We note, *inter alia*,

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[2] KAUZ–TV indicates in its pleadings that it does not request Cablevision to provide it with program exclusivity vis-a-vis Television Broadcast Station KTEN.

[3] Cablevision of Duncan indicates that it is providing KSWO–TV with program exclusivity vis-a-vis KTEN.

[4] On February 3, 1972, the Commission issued the *Cable Television Report and Order*, 37 Fed. Reg. 3252 (1972), which effective March 31, 1972, replaced the program exclusivity requirement of Section 74.1103 of the Commission's Rules with Section 76.93, a simultaneous network programming exclusivity rule,

that KWTV, the affected station, has failed to support petitioner's allegations.

6. In support of its waiver request vis-a-vis KOCO–TV, Cablevision of Duncan argues that although KSWO–TV's predicted Grade A contour slightly enters the community of Duncan, a waiver is justified because the penetration is de minimis. This argument must be rejected. Duncan's reliance on *Gainesville Cablevision Corporation*, FCC 67–675, 8 FCC 2d 465, to support its position is misplaced since Gainesville involved a violation of the distant signal prohibition of Section 74.1107 of the Commission's Rules and a Commission decision not to issue an order to show cause since the top 100 market signal in question penetrated an area that contained no subscribers. In the case at hand, Duncan is seeking a waiver in a program exclusivity matter and by its own admission KSWO–TV's predicted Grade A contour penetrates an area containing some subscribers. It is long established Commission policy that a station is entitled to priority when any part of the community is touched by the station's predicted contour. Under the circumstances, a waiver of the program exclusivity requirement has not been justified.

In view of the foregoing, the Commission finds that a grant of Cablevision of Duncan's requested waiver of Section 76.91(e) of the Commission's Rules for its cable television system at Duncan, Oklahoma, would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition For Special Relief" filed December 5, 1971, by Cablevision of Duncan, IS DENIED.

IT IS FURTHER ORDERED, That the "Petition For Special Relief" filed November 24, 1971, by Cablevision of Duncan, IS DENIED.

IT IS FURTHER ORDERED, That the "Petition For Order To Show Cause Pursuant To Section 74.1109 of the Commission's Rules", filed November 24, 1971, by Bass Brothers Telecasters, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That the "Petition For Issuance of Order to Show Cause and for Temporary Relief Pursuant to Section 74.1109 of the Commission's Rules", filed by KSWO–TV, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That Cablevision of Duncan IS DIRECTED to comply with the requirements of Section 76.91 of the Commission's Rules on its cable television system at Duncan, Oklahoma, within thirty (30) days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-689

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of
Request for Issuance of Tax Certificate for Sale of Interest in a Cable Television System Pursuant to Section 76.501(a)(2) of the Commission's Rules, by Carter Cable Television, Inc.
Re a Cable Television System at Gainesville, Tex.

File No. CTAX-4

Memorandum Opinion and Order

(Adopted July 26, 1972; Released August 1, 1972)

By the Commission: Chairman Burch absent; Commissioner Hooks not participating.

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules which, inter alia, prohibits cross ownership, operation, control or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order, we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Cablevision Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

2. Now before us is an application for a Section 1071 tax certificate, filed by Carter Cable Television, Inc. ("Carter Cable"), a wholly owned subsidiary of the licensee of Television Broadcast Station

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[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of the chapter, overlaps in whole or in part the service area of such system (i.e., the area within the system is serving subscribers . . . . NOTE 2: The word 'interest' as used herein includes, in the case of corporations, common officers or directors and partial (as well as total) ownership interests represented by ownership of voting stock. NOTE 3: In applying the provisions of paragraph (a) of this section to the stockholders of a corporation which has more than 50 stockholders: (a) only those stockholders need be considered who are officers or directors or who directly or indirectly own 1 percent or more of the outstanding voting stock."

[2] Section 1071 of the 1954 Internal Revenue Code provides that: "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Corporation to be necessary to appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elected, be treated as an involuntary conversion of such property within the meaning of section 1033."

WBAP–TV, Fort Worth, Texas,[3] with respect to Carter Cable's February 28, 1972, transfer of its stockholdings in Carter Cable Television of Gainesville, Inc. ("Carter Gainesville"), to G. J. Video Corporation. Prior to that sale, Carter Cable had a majority of the issued and outstanding stock of Carter Gainesville, a company which operates a cable television system at Gainesville, Texas.

3. In support of its application Carter Cable states the following: (a) Carter Cable acquired its majority-shareholder interest in Carter Gainesville prior to July 1, 1970. (b) Carter Gainesville has owned and operated a cable television system at Gainesville, Texas, since prior to July 1, 1970. (c) Gainesville is entirely within the predicted Grade B signal of Station WBAP–TV. (d) On January 14, 1972, pursuant to the divestiture requirements of Section 76.501 of the Commission's Rules, Carter Cable entered into a purchase agreement which provided for the sale of all of the issued and outstanding stock of Carter Gainesville to International Cablevision Corporation. (e) Neither International Cablevision nor its parent, Columbia Cable Systems, Inc., directly or indirectly owns, operates or has an interest in a national television network, a television broadcast station whose predicted Grade B contour overlaps in whole or in part the community of Gainesville, Texas, or a television translator station authorized to serve Gainesville, Texas, or has an interest in a television company whose service area within whose service area Gainesville, Texas, is located.[4] (f) On February 28, 1972, Carter Cable transferred all of its stock in Carter Gainesville to G. J. Video Company, successor in interest to International Cablevision.

4. The impact of Section 76.501 is that if a cable television system which has a cross-interest relationship with a local television broadcast station proposes to carry the signal of *any* television broadcast station (i.e., performs a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either the system or the station, in compliance with the requirements of new Section 76.501, is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television broadcast stations and cable television systems.

5. In view of the foregoing, we find that the sale by Carter Cable of its above-described interest in the Gainesville, Texas, cable television system operated by Carter Cable Television of Gainesville, Inc., was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of the Rules, with respect to the ownership and control of television stations and cable television systems.

ACCORDINGLY, IT IS ORDERED, That there BE ISSUED to Carter Cable Television, Inc., the tax certificate appended hereto, certifying that its sale of its interest in the above-referenced cable television system was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television systems.

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[3] Carter Publications, Inc.

[4] The assertions in item (e) are set forth in a letter from Columbia Cable's legal counsel to Carter Cable's legal counsel, and submitted by the latter to the Commission in support of Carter Cable's application.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Carter Cable Television, Inc., a wholly owned subsidiary of the licensee of Television Broadcast Station WBAP-TV, Fort Worth, Texas, has reported to the Commission that company's transfer, on March 5, 1972, of its interest in the cable television system at Gainesville, Texas, operated by Carter Cable Television of Gainesville, Inc., to G. J. Video Corporation, to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 26th day of July 1972.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-701

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Equal Employment Opportunity Inquiry

JULY 28, 1972.

THE COMMISSION BY COMMISSIONERS ROBERT E. LEE (ACTING CHAIRMAN), H. REX LEE, REID, WILEY AND HOOKS WITH COMMISSIONER JOHNSON CONCURRING IN PART AND DISSENTING IN PART ISSUED THE FOLLOWING PUBLIC NOTICE:

EQUAL EMPLOYMENT OPPORTUNITY INQUIRY

In processing Pennsylvania and Delaware license renewal applications the Commission examined each licensee's Equal Employment Opportunity Program (Section VI of FCC Form 303) in conjunction with its 1971 and 1972 Annual Employment Reports (FCC Form 395).

Based on this examination, the Commission is sending letters to 30 stations requesting additional information on the licensees' efforts to provide equal employment opportunity to minority persons and women. In sum, the Commission requested each licensee to explain why they believe that their employment record, as revealed in their 1971 and 1972 Annual Employment Reports, is consistent with the Commission's equal employment opportunity rules (Sections 73.125, 73.301 and 73.680).

As the Commission stated in its 1970 Report and Order, 23 FCC 2d 430, concerning nondiscrimination in broadcast employment practices, statistical data for any given year may not necessarily demonstrate the existence of discriminatory employment practices at a particular station. The Commission also stated, however, that statistical data can be useful to show industry employment patterns and to raise appropriate questions as to the reasons for such patterns.

Action on the renewal applications of those stations questioned will be deferred pending completion of the Commission's inquiry. After receipt of the information requested from those stations queried, the Commission will be in a better position to evaluate the effectiveness of their equal employment opportunity programs. Also, the Commission may be better informed of the problems broadcasters are encountering in implementing their programs. Based on the experience gained, the Commission will be in a position to determine whether further action is necessary to effectuate equal employment opportunity for minority persons and women in the broadcast industry.

In the meantime, the Commission wishes to emphasize that all broadcast licensees are expected to make positive efforts to implement both the spirit and letter of this important national policy—namely, that of providing equal employment opportunity without regard to race, color, religion, national origin or sex.

Action by the Commission July 26, 1972. Commissioners Robert E. Lee (Acting Chairman), H. Rex Lee, Reid, Wiley and Hooks, with Commissioner Johnson concurring in part and dissenting in part for the reasons to be shown in statement on Delaware and Pennsylvania renewals.

OPINION OF COMMISSIONER NICHOLAS JOHNSON, CONCURRING IN PART AND DISSENTING IN PART

Some four years after the Civil Rights Act of 1964 the FCC promulgated equal employment opportunity regulations for broadcasters. *Nondiscrimination Employment Practices of Broadcast Licensees*, 13 F.C.C. 2d 766 (1968); *Nondiscrimination Employment Practices of Broadcast Licensees*, 13 F.C.C. 2d 240 (1969); *Nondiscrimination Employment Practices of Broadcast Licensees*, 23 F.C.C. 2d 430 (1970).

As a part of those regulations, a new reporting form ("Form 395") was required to be filed annually. 18 F.C.C. 2d 240 (1969); 23 F.C.C. 2d 430 (1970). The form indicates the number of women, blacks and other minorities employed by the station in various job categories.

We have now been receiving these forms for over one year, and are thus able to examine changes in employment practices for the first time. The stations involved are now before us for license renewal—all radio and television stations in Pennsylvania and Delaware.

At the present time the Commission has neither personnel nor procedures for analyzing and processing these employment reports. We may, ultimately, want to establish a fully staffed independent office at the FCC for this and related purposes. Meanwhile, the forms are before us, and must either be ignored or acted upon in some fashion.

Confronted with these choices the Broadcast Bureau, my personal staff, and I have endeavored to evolve *some* standards that might be useful in processing these forms.[1] All Commissioners agree that no station should have its license revoked because of a statistical analysis of its employment record. All agree that some stations should at least get a letter from the FCC asking for an explanation of their employment patterns. The problem, then, is one of degree. What criteria should be used? How many stations should be queried? Should a stronger sanction (say, a one-year probationary renewal) be used in the worst cases? As might be expected, the Commissioners disagree on these questions.

At the outset, let me repeat that no Commissioner has urged a "quota" system, nor final Commission action based upon mere statistics alone. No sanctions are proposed for any station without first giving that station an opportunity to be heard on the *reasons* for its employment patterns, reasons which may be quite persuasive as to its good faith efforts to comply with the Commission's regulations. (Nor, I should note, do statistics clear a station of charges—and proof—that it *has* followed discriminatory practices in employment.) The only question is the criteria to be used by the Commission (when it is not confronted with complaints) in deciding to inquire further into the employment practices of some stations and not others.

I will describe some of these alternative criteria generally before detailing the analyses used.

The general standard, I presume, in any evaluation of fair employment practices based on statistics alone, is a rough parity between the number of potential employees available and those actually hired in all positions.

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[1] My special thanks to Bob Thorpe, Ivan Webber, and Sue Milsom for their analytical conceptions and hours of dedicated computation, and to Bonnie Herbert for painstaking typing of the charts used in our Commission presentations and this opinion.

For example, blacks constitute 11% of the population nationally. If one assumes that there is a national labor pool in broadcasting, the 11% figure might be used. If one assumes the local labor pool is the relevant population, those figures are either higher (Philadelphia is 17% black) or lower (Pittsburgh is 7% black). One could say that any station employing less than that percentage (whichever is decided to be applicable) should get a letter. Or, one could set one-half of that amount as the cutoff. (That is, in a community that is 10% black, all stations employing less than 5% blacks would get letters.)

Determining the relevant percentages for women is somewhat more difficult. Is the relevant percentage 50%, or the percentage of women in the work force (say, 30 to 40%)?

Both blacks and women suffer doubly. In part, it is a matter of the total numbers employed. But it is also a matter of the number of blacks and women in high paying jobs. It is here where discrimination is felt most harshly. Janitorial and secretarial positions are not the ultimate in employment opportunity.

The appropriate comparison here, it would seem to me, is the percentage of the minority in question in high paying jobs compared to the percentage of all employees in high paying jobs. For example, if five of ten blacks are in high paying jobs, and twenty of forty of all employees are in high paying jobs, there is a 1.00 relationship between the percentages (50% of blacks; 50% of all employees). If, on the other hand, only two blacks are in high paying jobs, there is a 0.40 relationship (20% of blacks; 50% of all employees). That is, less than half as many blacks are in high paying jobs (40%) as there are of all employees in high paying jobs. The same approach can be used for computing the relationship between the percentages of women in high paying jobs and all employees in high paying jobs.

The standard for sending letters with regard to minority high pay employment could be anything below a 1.00 relationship, or it could be some lesser cutoff: 0.75 or 0.50.

The Commission has chosen to ignore these criteria, and consider only those stations with *no* blacks or women, or whose employment of blacks and women has actually *declined*. Even in these relatively few cases, the suggestion is clear that the station may be able to excuse its record if it has not hired any employees during the past year. In light of the fact that all we are doing is sending letters, and that we are now trying to gather more information about how the program is working, I believe these criteria are far too restrictive.

Furthermore, the Commission is only looking at stations with more than ten employees. Admittedly, it's a little difficult to have 10% of five employees. But we have deliberately required reports of all stations with five or more employees, and I believe those reports should be examined and subject to the application of some criteria—at least in the most extreme cases. (For example, there is a station (WFAR), in a city that is 30% black (Farrell, Pennsylvania), which employs *no* blacks in its six-man work force. I would send station WFAR a letter.)

Although I would have queried many more stations, I applaud the Commission's interest and I believe a beginning has been made. Our new Commissioner, Judge Hooks, has done an excellent job of pushing the Commission about as far as it could be pushed—clearly more than I could have achieved—and that has been a real accomplishment. The industry is now again on notice that the Commission intends to monitor performance, to expect improvement, and to act when the evidence indicates a need. The Commission has promised to take similar action in the next renewal group. I concur in what the majority has done.

I would have sent letters to every station with 10 or more employees in communities where there are more than 1% blacks, and (1) the station's black employment is less than the percent of blacks in the community, or (2) the station has a lower proportion of blacks in high paying jobs than the proportion of all employees in high paying jobs. In addition, I would have sent a letter to (3) every station with ten or more employees that has no black employees. I would defer renewal until adequate explanations were received from the stations. I would be prepared to consider short-term renewals (requiring only a new equal-employment showing in a year) for stations in the bottom 20% of these criteria. I would have sent letters to (4) stations with ten or more employees whose percentage of women in high paying jobs is less than 0.5 of the percentage of all employees that are in high paying jobs. And I would write letters to (5) stations with ten or more employees which have no women employees or (6) whose percentage of women employees has declined below the percentage of women in the work force in the city of license (or SMSA). And I would be willing to consider short-term renewals for stations that show up in the bottom 20% of these criteria, too.

In addition, there are certain stations with fewer than ten employees to which I would have sent letters on the basis of their exceptionally poor showing statistically. Among these are the radio station in Mexico, Pennsylvania, WJUN, which has no women employed; the radio station in Farrell, Pennsylvania, WFAR, which employs no blacks in a community that is 30% black: and the radio station in Seaford, Delaware, WSUX, which is in a community 18% black, and yet employes no blacks. In my view these appear to be gross imbalances in the make-up of the licensee's employment that—on the statistical facts alone—cannot be forgiven because these stations happen to have less than ten employees.

Moreover, the use of the criteria I have itemized selectively identifies those stations that reasonably could be asked to explain why their performances seems inconsistent with compliance with Commission equal employment rules. I believe these criteria do so better than the criteria used by the majority. I believe that to be true whatever number of stations are selected by the Commission to receive letters.

Now let us turn to a little more detailed explanation of the analyses and charts. The analyses were done based on data available as of a certain date, focusing on the employment of blacks and women (other minorities are very small in these states). More data became available later. Some stations filed late, or for other reasons had not made data available earlier. Rather than trying to redo the analysis completely, in view of our very limited staff resources this late data was ignored.

It would have made very little difference in the patterns of performance anyway. Radio and television were treated separately.

In the belief that persons outside the Commission would find the information useful, I present here our analysis of the employment of blacks and women in Pennsylvania and Delaware. There are numerous ways of manipulating the data, and developing criteria for Commission action. Hopefully, one result of the Commission's efforts will be improvements in these areas. I specifically solicit comments from interested parties on alternative analysis and procedures.

Television—Black Employment

Pennsylvania's population is 8.61% black, Delaware's population is 14.3% black. Of 27 stations where data is complete, the comparative statistics on overall black employment are shown by Table I.

TABLE I.—*Percentage of black employees*

1971 total employment	2, 179	1972 total employment	2, 140
1971 black employment	146	1972 black employment	157
Percent black employment	6. 7	Percent black employment	7. 3

The comparative statistics on employment in the three highest ranked job categories in FCC Form 395 (for which 24 stations forms are complete) are shown by Table II.

TABLE II.—*Percentage of highly paid black employees*

1971 HP employment	1, 191	1972 total HP employment	1, 171
1971 black HP	45	1972 black HP	50
Percent black HP	3. 8	Percent black HP	4. 3

Of perhaps greater relevance is the ratio of blacks in high paid jobs to the ratio of all employees in high paid jobs. There are approximately one-half as many blacks in such positions.

TABLE III.—*Ratio of blacks to all employees in highly paid jobs*

1971 ratio:

$$\frac{\frac{\text{Black HP}}{\text{Black}}}{\frac{\text{All HP}}{\text{All employment}}} = 0.564$$

1972 ratio:

$$\frac{\frac{\text{Black HP}}{\text{Black}}}{\frac{\text{All HP}}{\text{All employment}}} = 0.582$$

Moreover, of the 27 stations reporting there are 10, with a total employment of 323, that employed *no* blacks in either 1971 or 1972.[2] Of the 26 stations for which relevant data are available, there are 13—one-half—with a 1972 total of 324 high paid employees that had *no* blacks in high paid jobs in 1971 or 1972.[3]

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[2] WFBG-TV, Altoona; WLYH-TV, Lebanon; WSBA-TV, York; WDAU-TV, Scranton; WNEP-TV, Wilkes-Barre; WSEE-TV, Erie; WJET-TV, Erie; WQLN-TV, Erie; WPSX-TV, Clearfield; and WLVT-TV, Allentown.

[3] WKBS-TV, Philadelphia; WFBG-TV, Altoona; WLYH-TV, Lebanon; WSBA-TV, York; WBRE-TV, Wilkes-Barre; WNEP-TV, Wilkes-Barre; WDAU-TV, Scranton; WICU-TV, Erie; WSEE-TV, Erie; WJET-TV, Erie; WQLN-TV, Erie; WPSX-TV, Clearfield; and WLVT-TV, Allentown.

Women Employment

Pennsylvania's population is 51.96% women, Delaware's population is 51.23% women. For the 27 stations where data is complete, the comparative statistics for overall employment of women are shown by Table IV.

TABLE IV.—*Percentage of women employees*

1971 total employment	2, 179	1972 total employment	2, 140
1971 women employment	484	1972 women employment	472
Percent women	22. 2	Percent women	22. 1

For the 24 stations from which relevant data is complete, the comparative statistics for high pay employment of women is shown by Table V.

TABLE V.—*Percentage of highly paid women employees*

1971 Total HP employment	1, 191	1972 Total HP employment	1, 171
1971 HP women	84	1972 HP women	63
Percent HP women	7. 1	Percent HP women	5. 4

Once again, of greatest relevance is the ratio of women in highly paid jobs to all employees in highly paid jobs. There are about one-quarter as many women in such jobs as all employees—a ratio about one-half of that for blacks—and one that has significantly declined from 1971 to 1972.

TABLE VI.—*Ratio of women to all employees in highly paid jobs*

1971 ratio:

$$\frac{\dfrac{\text{Women HP}}{\text{Women}}}{\dfrac{\text{All HP}}{\text{All employment}}} = 0.318$$

1972 ratio:

$$\frac{\dfrac{\text{Women HP}}{\text{Women}}}{\dfrac{\text{All HP}}{\text{All employment}}} = 0.244$$

Of 24 stations reporting relevant data, there are five with a total 1972 high pay employment of 147 that have no women in high pay jobs in 1971 or 1972.[4]

Our analysis also includes seven charts which provide data on individual stations. Chart I shows the number and percent of black employment (1971 and 1972) by markets and stations. Chart II shows number and percent of black high pay employment (1971 and 1972) by markets and stations. Chart III shows an index for stations in SMSAs with more than one percent blacks. This index relates the percent of black employment (or black HP employment) to the percent of blacks in the SMSA. The chart also compares the percent of blacks in HP jobs to the percent of all employees in HP jobs for each station.

Chart IV shows number and percent of overall employment of women in 1971 and 1972 by market and station. Chart V shows number and percent of employment of women in high pay jobs 1971 and 1972. The chart also compares the percent of women in HP jobs to the percent of all employees in HP jobs.

As I have done in other analysis of stations,[5] Chart VI shows the rank of stations in seven categories of black employment measures. Chart VII makes the same ranking for women.[6]

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[4] WKBS–TV, Philadelphia; WFBG–TV, Altoona; WDAU–TV, Scranton; WICU–TV, Erie; and WSEE–TV, Erie.

[5] See, *e.g., New York State License Renewals*, 18 F.C.C. 2d 268, 269, 322 (1969); *Renewals of Standard Broadcast and Television Licenses*, 21 F.C.C. 2d 35 (1969).

Radio—Black Employment

Pennsylvania's population is 8.61% black, Delaware's population is 14.3% black. Of the 138 stations for which data are available for 1971, and of the 150 stations for which 1972 data are available, the comparative statistics on overall black employment are shown by Table I.

TABLE I.—*Percent of black employees*

1971 total employment	2,282	1972 total employment	2,477
1971 black employment	102	1972 black employment	119
Percent black employment	4.47	Percent black employment	4.80

The comparative statistics on employment in the highest three job categories in FCC Form 395 are shown by Table II.

TABLE II.—*Percentage of highly paid black employees*

1971 HP employment	1,302	1972 HP employment	1,528
1972 black HP	38	1972 black HP	62
Percent black HP	2.92	Percent black HP	4.06

The ratio of blacks in high paid jobs to all employees in high paid jobs is shown by Table III.

TABLE III.—*Ratio of blacks to all employees in highly paid jobs*

1971 ratio:

$$\frac{\begin{matrix}\text{Black HP}\\ \text{Black}\end{matrix}}{\begin{matrix}\text{All HP}\\ \text{All employment}\end{matrix}}\text{—}0.653$$

1972 ratio:

$$\frac{\begin{matrix}\text{Black HP}\\ \text{Black}\end{matrix}}{\begin{matrix}\text{All HP}\\ \text{All employment}\end{matrix}}\text{—}0.844$$

Of the 138 stations, there are 112, with a total employment of 1,439 that have no blacks in either 1971 or 1972. And there are 136 stations with a 1972 high pay job total of 1,077 that have no blacks in high pay jobs.

Women Employment

For the stations for which data is available, the comparative statistics for overall employment of women by radio stations are shown by Table IV.

TABLE IV.—*Percentage of women employees*

1971 total employment	2,282	1972 total employment	2,477
1971 women employment	504	1972 women employment	541
Percent women employment	22.09	Percent women employment	21.84

The comparative statistics for high pay employment of women are shown by Table V.

TABLE V.—*Percentage of highly paid women employees*

1971 HP employment	1,302	1972 HP employment	1,528
1971 HP women	56	1972 HP women	71
Percent HP women	4.30	Percent HP women	4.65

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[6] There are only five categories. Computing an index would not affect the ranks. The variation in percent of women in different cities is so small that any index figure would produce exactly the same rank as that of percent of women employed. Figures on the percent of the work force who vary less markedly than the percentages of blacks in the population.

Of greatest significance for women is the ratio of women to all employees in highly paid jobs. A woman fills such a job only about one-fifth as often as all other employees—a figure about one-quarter that of blacks.

TABLE VI.—*Ratio of women to all employees in highly paid jobs*

1971 ratio:

$$\frac{\substack{\text{Women HP}\\ \text{Women}}}{\substack{\text{All HP}\\ \text{All employment}}}\;0.194$$

1972 ratio:

$$\frac{\substack{\text{Women HP}\\ \text{Women}}}{\substack{\text{All HP}\\ \text{All employment}}}\;0.212$$

Of 138 stations there are 88 stations with 818 high pay jobs that have no women in high paying jobs in 1972.

The Selected Data Radio Charts

For each Standard Metropolitan Statistical Area (SMSA), and for the non-SMSAs, there are two "Selected Data Charts." Chart I gives 1971 and 1972 data on the percent and number of black employees. This chart also gives high pay comparisons and community indexes on the employment of blacks. The high pay comparison shows the correlation between the percentage of minority employees holding high paid jobs and all employees holding high paid jobs (*e.g.*, in a station with 50% of its minority employees in high paying jobs the comparison would be numerically represented as 1.00; if only 25% of the minority employees held high paying jobs the comparison would be .50; and if 100% of the station's minority employees held high paying jobs the comparison would be 2.00). The community index is a numerical representation of the correlation between the percent of blacks employed by a station and the percent of blacks in the community with the number 100 representing a perfect correlation. (*E.g.*, in an area 10% black, a station with 20% of its employees black would have an index of 200, a station 10% black an index of 100, and a station 5% black an index of 50.)

Chart II does the same thing for the employment of women except the community index is deleted. Both charts are arranged according to total 1972 employment with largest stations at the top and smallest at the bottom.

Conclusion

An initial evaluation of the first batch statistics on employment of women and blacks by radio and television stations (those from Pennsylvania and Delaware) suggests the broadcasting industry has a long way to go to achieve the standards of the Civil Rights Act of 1964 and the FCC's employment regulations of 1968–70.

No one urges, especially in these early stages, punitive action for its own sake, or the rigid application of statistical analyses alone. It is *results* that we are after—a rapid and intense effort to make up for hundreds of years of discrimination, not merely the absence of continued prejudice. It may very well be that FCC (or joint government-industry) counselling, recruiting and training programs will be necessary in the near future.

At the same time the FCC—as well as the broadcasting industry—must get on with the job, now, with what it has.

The majority has begun—even though much more modestly than I would have. If the hours my staff has put into these reports has been, and will continue to be, of some help in directing and spurring these early Commission efforts we will be well repaid.

TV STATIONS—PENNSYLVANIA

CHART I.—*Percentage of black employees*

Station	1971 employees	Black	Percent	1972 employees	Black	Percent	Percent black in SMSA
Philadelphia:							
WCAU	316	37	11.7	282	35	12.4	17.32
KYW	197	14	7.1	202	20	9.9	
WPVI	193	18	9.3	153	20	13.1	
WPHL^u	76	11	14.5	75	6	8.0	
WTAF^u	63	3	4.8	66	5	7.9	
WKBS^u	61	7	11.5	65	9	13.8	
Pittsburgh:							
KDKA	160	14	8.8	178	19	10.7	7.07
WQED/WQEX^e	153	12	7.8	155	11	7.1	
WICC	141	12	8.5	144	12	8.3	
WTAE	132	8	6.1	130	9	6.9	
Johnstown/Altoona:							
WJAC	74	2	2.7	74	1	1.4	1.35/0.72
WFBG	60	0	0	59	0	0	
WARD^u	9	0	0	NA	NA	NA	
Lancaster/York/Harrisburg/Lebanon:							
WGAL	124	3	2.4	123	3	2.4	1.67/5.43/6.84/0.48
WTPA^u	40	2	5.0	40	3	7.5	
WHP^u	37	1	2.7	38	1	2.6	
WLYH^u	27	0	0	33	0	0	
WSBA^u	20	0	0	18	0	0	
Wilkes-Barre/Scranton:							
WBRE^u	48	1	2.1	48	2	4.2	0.48/0.40
WNEP^u	45	0	0	44	0	0	
WDAU^u	36	0	0	34	0	0	
Erie:							
WICU	41	1	2.4	44	1	2.3	3.39
WSEE^u	28	0	0	25	0	0	
WJET^u	24	0	0	24	0	0	
WQLN^u	18	0	0	16	0	0	
Clearfield:							
WPSX^e	45	0	0	53	0	0	.77
Allentown:							
WLVT^e	17	0	0	17	0	0	1.18
Scranton:							
WVIA^e	18	0	0	NA	NA	NA	.40
Harrisburg:							
WITF^e	69	1	1.4	NA	NA	NA	6.84
Wilmington, Del./Philadelphia:							
WHYY/WUHY^e	NA	NA	NA	82	6	7.3	12.19

NOTES:
^{u}=UHF.
^{e}=Educational.
NA=Not available.

TV STATIONS—PENNSYLANIA—Continued

CHART II.—*Black high pay employment*

Station	1971 employees	Total HP	Black HP	Percent black of HP	1972 employees	Total HP	Black HP	Percent black of HP
Philadelphia:								
WCAU	316	205	9	4.4	282	177	9	5.1
KYW	197	112	4	3.6	202	133	9	6.8
WPVI	193	104	10	9.6	153	88	10	11.4
WPHL^{u}	76	38	3	7.9	75	24	1	4.2
WTAF^{u}	63	42	1	2.4	66	41	2	4.9
WKBS^{u}	61	37	0	0	65	39	0	0
Pittsburgh:								
KDKA	160	100	4	4.0	178	108	6	5.6
WQED/WQEX^{e}	153	NA	NA	NA	155	99	7	7.1
WIIC	141	100	7	7.0	144	99	4	4.0
WTAE	132	76	4	5.3	130	75	5	6.7
Johnstown/Altoona:								
WJAC	74	51	1	2.0	74	52	1	1.9
WFBG	60	34	0	0	59	35	0	0
WARD^{u}	9	5	0	0	NA	NA	NA	NA
Lancaster/York/Harrisburg/Lebanon:								
WGAL	124	NA	NA	NA	123	55	1	1.8
WTPA^{u}	40	25	1	4.0	40	25	2	8.0
WHP^{u}	37	24	1	4.0	38	25	1	4.0
WLYH^{u}	27	16	0	0	33	20	0	0
WSBA^{u}	20	13	0	0	18	9	0	0
Wilkes-Barre/Scranton:								
WBRE^{u}	48	28	0	0	48	27	0	0
WNEP^{u}	45	30	0	0	44	30	0	0
WDAU^{u}	36	26	0	0	34	26	0	0
Erie:								
WICU	41	29	0	0	44	31	0	0
WSEE^{u}	28	17	0	0	25	16	0	0
WJET^{u}	24	17	0	0	24	19	0	0
WQLN^{e}	18	15	0	0	16	12	0	0
Clearfield:								
WPSX^{e}	45	38	0	0	53	46	0	0
Allentown:								
WLVT^{e}	17	14	0	0	17	14	0	0
Scranton:								
WVIA^{e}	18	14	0	0	NA	NA	NA	NA
Harrisburg:								
WITF^{e}	69	41	1	2.4	NA	NA	NA	NA
Wilmington, Del./Philadelphia:								
WHYY/WUHY^{e}	NA	NA	NA	NA	82	60	3	5.0

NOTES:

HP = High Pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

^{u} = UHF.

^{e} = Educational station.

NA = Not available.

TV STATIONS—PENNSYLVANIA—Continued

CHART III.—*Index for stations in SMSA's with 1 percent or more blacks*

Station	1971 employees	Percent blacks in SMSA	Index	Index HP	1972 employees	Index	Index HP	HP comparison
Philadelphia:								
WCAU	316	17.52	66.8	25.1	282	70.8	29.1	0.41
KYW	197	17.52	40.5	20.5	202	56.5	38.8	.68
WPVI	193	17.52	53.1	54.8	153	74.8	65.1	.87
WPHL[u]	76	17.52	40.8	45.1	75	59.3	24.0	.52
WTAF[u]	63	17.52	27.4	13.7	66	45.1	28.0	.64
WKBS[u]	61	17.52	65.6	0	65	78.8	0	0
Pittsburgh:								
KDKA	160	7.07	124.5	56.6	178	151.3	79.2	.52
WQED/WQEX[e]	153	7.07	110.3	NA	155	100.4	100.4	1.00
WIIC	141	7.07	120.2	99.0	144	117.8	56.6	.48
WTAE	132	7.07	86.3	75.0	130	97.6	94.8	.96
Johnstown/Altoona:								
WJAC	74	1.35	200.0	148.1	74	103.7	140.7	1.41
WARD[u]	9	1.35	0	0	NA	NA	NA	NA
Lancaster/York/Harrisburg/Lebanon:								
WGAL	124	1.67	143.7	NA	123	143.7	107.8	.74
WTPA[u]	40	6.84	73.1	58.5	40	109.6	117.0	1.07
WHP[u]	37	6.84	39.5	58.5	38	38.0	58.5	1.52
WSBA[u]	20	5.43	0	0	18	0	0	0
Erie:								
WICU	41	3.39	70.8	0	44	67.8	0	0
WSEE[u]	28	3.39	0	0	25	0	0	0
WJET[u]	24	3.39	9	0	24	0	0	0
WQLN[e]	18	3.39	9	0	16	0	0	0
Allentown:								
WLVT[e]	17	1.18	0	0	17	0	0	0
Harrisburg:								
WITF	69	6.84	20.5	35.1	NA	NA	NA	NA
Wilmington, Del./Phaldelphia:								
WHYY/WUHY[e]	NA	12.19	NA	NA	82	60.7	41.8	.68

NOTES:

The Index is the ratio of percent of black employees to the percent of blacks in the Metropolitan area.

The HP comparison is the ratio of percentage of all black employees who are black HP to the percentage of all employees who are HP.

[u]=UHF.

[e]=Educational station.

HP=High pay.

NA=Not available.

TV STATIONS—PENNSYLVANIA—Continued

CHART IV.—*Employment of women*

Station	Total 1971 employees	Women	Percent	Total 1972 employees	Women	Percent
Philadelphia:						
WCAU	316	73	23.1	282	56	19.9
KYW	197	35	17.8	202	37	18.3
WPVI	193	48	24.9	153	36	23.5
WPHL [u]	76	16	21.7	75	23	30.7
WTAF [u]	63	15	22.7	66	16	24.2
WKBS [u]	61	13	21.3	65	14	21.5
Pittsburgh:						
KDKA	160	30	18.8	178	33	18.5
WQED/WQEX •	153	50	32.7	155	49	31.6
WIIC	144	28	19.9	144	29	20.1
WTAE	132	23	17.4	130	25	19.2
Johnstown/Altoona:						
WJAC	74	13	17.6	74	13	17.6
WFBG	60	15	25.0	59	15	25.4
WARD [u]	9	2	22.2	NA	NA	NA
Lancaster/York/Harrisburg/Lebanon:						
WGAL	124	32	25.8	123	32	26.0
WTPA [u]	40	9	22.5	40	9	22.5
WHP [u]	37	12	32.4	38	11	28.9
WLYH [u]	27	7	25.9	33	10	30.3
WSBA [u]	20	4	20.0	18	6	33.3
Wilkes-Barre/Scranton:						
WBRE [u]	48	10	20.8	48	9	18.8
WNEP [u]	45	10	22.2	44	11	25.0
WDAU [u]	36	6	16.7	34	4	11.8
Erie:						
WICU	41	7	17.1	44	8	18.2
WSEE [u]	28	6	21.4	25	4	16.0
WJET [u]	24	4	16.7	24	4	16.7
WQLN •	18	6	33.3	16	4	25.0
Clearfield:						
WPSX •	45	7	15.6	53	9	17.0
Allentown:						
WLVT •	17	5	29.4	17	5	29.4
Scranton:						
WVIA •	18	4	22.2	NA	NA	NA
Harrisburg:						
WITF	69	25	36.2	NA	NA	NA
Wilmington, Del./Philadelphia:						
WHYY/WUHY •	NA	NA	NA	82	15	18.3

NOTES:
[u]=UHF.
• =Educational station.
NA=Not available.

TV STATIONS—PENNSYLVANIA—Continued

CHART V.—*Women in high pay employment*

Station	Total 1971 employees	Total HP	HP women	Percent women HP	Total 1972 employees	Total HP	HP women	Percent women HP	HP comparison
Philadelphia:									
WCAU	316	205	26	12.7	282	177	8	4.5	0.22
KTW	197	112	4	3.6	202	133	7	5.3	.29
WPVI	193	104	16	15.4	153	88	9	10.2	.43
WPHL[u]	76	38	5	13.2	75	24	2	8.3	.29
WTAF[u]	63	42	3	7.1	66	41	3	7.3	.31
WKBS[u]	61	37	0	0	65	39	0	0	0
Pittsburgh:									
KDKA	160	100	3	3.0	178	108	3	2.8	.15
WQED/WQEX[e]	153	NA	NA	NA	155	99	15	15.2	.48
WIIC	144	100	5	5.0	144	99	7	7.1	.35
WTAE	132	76	41	5.3	130	75	4	5.3	.28
Johnstown/Altoona:									
WJAC	74	51	3	5.9	74	52	3	5.8	.33
WFBG	60	34	0	0	59	35	0	0	0
WARD[u]	9	5	0	0	NA	NA	NA	NA	NA
Lancaster/York/Harrisburg/Lebanon:									
WGAL	124	NA	NA	NA	123	55	0	0	0
WTPA[u]	40	25	2	8.0	40	25	2	8.0	.35
WHP[u]	37	24	2	8.3	38	25	1	4.0	.14
WCYH[u]	27	16	1	6.3	38	20	3	15.0	.45
WSBA[u]	20	13	2	15.4	18	9	0	0	0

Wilkes-Barre/Scranton:									
WBRE[u]	48	28	0	0	48	27	2	7.4	.39
WNEP[u]	45	30	1	3.3	44	30	2	6.7	.26
WDAU[u]	36	26	0	0	34	26	0	0	0
Erie:									
WICU	41	29	0	0	44	31	0	0	0
WSEE[u]	28	17	0	0	25	16	0	0	0
WJET[u]	24	17	1	5.9	24	19	2	10.5	.63
WQLN[e]	18	15	3	20.0	16	12	0	0	0
Clearfield:									
WPSX[e]	45	38	1	2.6	53	46	3	6.5	.39
Allentown:									
WLVT[e]	17	14	2	14.3	17	14	2	14.3	.49
Scranton:									
WVIA[e]	18	14	1	7.1	NA	NA	NA	NA	NA
Harrisburg:									
WITF[e]	69	41	8	19.5	NA	NA	NA	NA	NA
Wilmington, Del./Philadelphia:									
WHYY/WUHY[e]	NA	NA	NA	NA	82	60	2	3.3	.18

NOTES:
[u] = UHF.
[e] = Educational station.
HP = high pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).
NA = Not available.

See text for explanation of HP comparison.

TV STATIONS—PENNSYLVANIA—Continued

CHART VI.—*Comparative station rankings—black employment average*

Station	A	B	C	D	E	F	G
Philadelphia:							
WCAU	3	7	9	7	10	11	14
KYW	5	4	3	2	12	10	8
WPVI	2	1	1	4	9	7	6
WPHL ^{u}	7	9	24	21	13	13	11
WTAF ^{u}	8	8	2	3	14	12	10
WKBS ^{u}	1	14	5	18	8	14	15
Pittsburgh:							
KDKA	4	6	7	5	1	6	11
WQED/WQEX ^{e}	10	3	22	NA	6	4	4
WIIC	6	10	21	20	3	9	13
WTAE	11	5	8	6	7	5	5
Johnstown/Altoona:							
WJAC	16	12	23	19	5	1	2
WFBG	17	14	18	18	NR	NR	NR
WARD ^{u}	NA	NA	NA	NA	NA	NA	NA
Lancaster/York/Harrisburg/Lebanon:							
WGAL	14	13	10	NA	2	3	7
WTPA ^{u}	9	2	4	1	4	2	3
WHP ^{u}	13	11	19	8	15	8	1
WLYH ^{u}	17	14	18	18	NR	NR	NR
WSBA ^{u}	17	14	18	18	16	14	NR
Wilkes-Barre/Scranton:							
WBRE ^{u}	12	14	16	18	NR	NR	15
WNEP ^{u}	17	14	18	18	NR	NR	NR
WDAU ^{u}	17	14	18	18	NR	NR	NR
Erie:							
WICU	15	14	19	18	11	14	15
WSEE ^{u}	17	14	18	18	16	14	NR
WJET ^{u}	17	14	18	18	16	14	NR
WQLN ^{e}	17	14	18	18	16	14	NR
Clearfield:							
WPSX ^{e}	17	14	18	18	NR	NR	NR
Allentown:							
WLVT ^{e}	17	14	18	18	16	14	NR
Scranton:							
WVIA ^{e}	NA	NA	NA	NA	NA	NR	NA
Harrisburg:							
WITF ^{e}	NA	NA	NA	NA	NA	NA	NA
Wilmington, Del./Philadelphia:							
WHYY/WUHY ^{e}	9.5	7.5	NA	NA	12.5	9.5	8.8

NOTES:
A = Percent blacks employed 1972.
B = Percent blacks employed in HP jobs (compared with all HP jobs) in 1972.
C = Absolute increase in percent black employed 1971-72.
D = Absolute increase in percent blacks employed in HP jobs 1971-72.
E = Black index 1972 in communities more than 1 percent black.
F = Black index 1972 HP jobs in more than 1 percent black communities.
G = Black HP/Black—HP total employees 1972 (only stations with blacks).
^{u} = UHF.
^{e} = Educational station.
NA = Not available.
NR = Not ranked because of low percentage of blacks in SMSA.

TV STATIONS—PENNSYLVANIA—Continued

CHART VII.—*Comparative stations rankings—women employment*

Station	A	B	C	D	E
Philadelphia:					
WCAU	16	16	21	20	16
KYW	20	14	9	5	12
WPVI	12	5	19	19	5
WPHL^{u}	3	6	2	18	12
WTAF^{u}	11	9	6	6	11
WKBS^{u}	14	19	11	13	19
Pittsburgh:					
KDKA	19	18	17	15	17
WQED/WQEX^{e}	2	1	18	NA	3
WIIC	15	10	11	4	8
WTAE	17	15	5	7	14
Johnstown/Altoona:					
WJAC	22	13	14	14	10
WFBG	8	19	10	13	19
WARD^{u}	NA	NA	NA	NA	NA
Lancaster/York/Harrisburg/Lebanon:					
WGAL	7	19	11	NA	19
WTPA^{u}	13	7	14	7	9
WHP^{u}	6	17	22	16	18
WLYH^{u}	4	2	3	1	4
WSBA^{u}	1	19	1	21	19
Wilkes-Barre/Scranton:					
WBRE^{u}	18	8	20	2	6
WNEP^{u}	9	11	4	3	15
WDAU^{u}	26	19	23	13	19
Erie:					
WICU	21	19	8	13	19
WSEE^{u}	25	19	24	13	19
WJET^{u}	24	4	14	17	1
WQLN^{e}	9	19	25	22	19
Clearfield:					
WPSK^{e}	23	12	7	2	6
Allentown:					
WLVT^{e}	5	3	14	13	2
Scranton:					
WVIA^{e}	NA	NA	NA	NA	NA
Harrisburg:					
WITF^{e}	NA	NA	NA	NA	NA
Wilmington, Del./Philadelphia:					
WHYY/WUHY^{e}	20	18.5	NA	NA	16.5

NOTES:
A = Percent women employed 1972.
B = Percent women employed in HP jobs 1972.
C = Absolute increase in percent women employed 1971-72.
D = Absolute increase in percent women employed in HP jobs 1971-72.
E = Women HP/Women—HP/Total employees 1972.
^{u} = UHF.
^{e} = Educational.
NA = Not available.

RADIO STATIONS—PHILADELPHIA, PA.

Selected Data Chart I.—*Employment of blacks*

Station	Percent black SMSA	1971 employment	Blacks	Percent black	1972 employment	Blacks	Percent black	HP	HP black	HP comparison	Community index total black employment
KYW	17.52	70	5	7.1	84	8	9.5	59	6	1.07	51.2
WCAU	17.52	73	6	8.2	70	9	12.9	49	4	.63	73.6
KQV	17.52	64	7	10.9	62	8	12.9	42	3	.56	40.5
WFIL	17.52	61	3	4.9	54	4	7.4	36	2	.75	32.0
WIP	17.52	54	2	3.7	50	3	6.0	31	2	1.08	34.2
WDAS	17.52	53	22	41.5	47	22	46.8	31	15	1.03	267.1
WHAT	17.52	28	15	53.6	37	14	37.8	21	9	1.12	215.8
WIBG	17.52	34	1	2.9	35	1	2.9	21	0	0	16.6
WFLN	17.52	25	1	4.0	25	1	4.0	19	0	0	22.8
WDVR	17.52	29	1	3.4	24	2	8.3	13	0	0	47.4
WMMR	17.52	18	2	11.1	21	2	9.5	12	0	0	54.2
WCOJ	17.52	21	0	0	21	0	0	11	0	0	0
WPBS	17.52	NA	NA	NA	18	1	5.6	10	1	1.79	32.0
WRCP	17.52	22	1	4.5	16	0	0	11	0	0	0
WBCB	17.52	17	0	0	15	0	0	9	0	0	0
WIFI	17.52	12	1	8.3	15	1	6.7	8	1	1.89	38.2
WTEL	17.52	15	0	0	14	0	0	13	0	0	0
WWSH	17.52	14	0	0	13	0	0	8	0	0	0
WYSP	17.52	NA	NA	NA	12	0	0	8	0	0	0
WNPV	17.52	12	0	0	12	0	0	6	0	0	0
WUHY	17.52	NA	NA	NA	11	1	9.1	10	0	0	51.9
WPAZ	17.52	NA	NA	NA	8	0	0	3	0	0	0
WBUX	17.52	5	0	0	7	0	0	6	0	0	0
WCHE	17.52	6	0	0	7	0	0	4	0	0	0

Note.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—PHILADELPHIA, PA.—Continued

SELECTED DATA CHART II.—*Employment of women*

Station	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
KYW	70	13	18.6	55	4	7.3	84	16	19.0	59	3	5.1	0.27
WCAU	73	15	20.5	53	4	7.5	70	14	20.0	49	2	4.1	.20
KQV	64	15	23.4	39	3	7.7	62	16	25.8	42	4	9.5	.37
WFIL	61	15	24.6	40	2	5.0	54	11	20.4	36	1	2.8	.13
WIP	54	13	24.1	33	1	3.0	50	14	28.0	31	2	6.5	.23
WDAS	53	14	26.4	15	0	0	47	11	23.4	31	2	6.5	.27
WHAT	28	9	32.1	14	1	7.1	37	9	24.3	21	2	9.5	.36
WIBG	34	7	20.6	20	0	0	35	7	20.0	21	0	0	0
WFLN	25	6	24.0	19	4	21.1	25	6	24.0	19	4	21.1	.88
WDVR	29	5	17.2	NA	NA	NA	24	5	20.8	13	0	0	0
WMMR	18	4	22.2	11	0	0	21	4	19.0	12	0	0	0
WCOJ	21	5	23.8	12	0	0	21	6	28.6	11	0	0	0
WPBS	NA	NA	NA	NA	NA	NA	18	5	27.8	10	0	0	0
WRCP	22	3	13.6	15	0	0	16	3	18.8	11	1	9.1	.48
WBCB	17	5	29.4	3	0	0	15	4	26.7	9	0	0	0
WIFI	12	3	25.0	NA	NA	NA	15	2	13.3	8	0	0	0
WTEL	15	2	13.3	13	0	0	14	1	7.1	13	0	0	0
WWSH	14	2	14.3	NA	NA	NA	13	2	15.4	8	0	0	0
WYSP	NA	NA	NA	NA	NA	NA	12	1	8.3	8	0	0	0
WNPV	12	3	25.0	8	0	0	12	3	25.0	6	1	16.7	.66
WUHY	NA	NA	NA	NA	NA	NA	11	2	18.2	10	1	10.0	.55
WPAZ	NA	NA	NA	NA	NA	NA	8	3	37.5	3	0	0	0
WBUX	5	2	40.0	3	0	0	7	2	28.6	6	1	16.7	.58
WCHE	6	2	33.3	4	0	0	7	2	28.6	4	1	25.0	.88

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—PITTSBURGH, PA.

SELECTED DATA CHART I.—*Employment of blacks*

Station	Percent black SMSA	1971 employment	Black	Percent	1972 employment	Black	Percent black	HP	HP black	HP comparison	Community index total black employment
KDKA	7.07	64	7	10.9	68	8	11.8	51	3	0.51	166.9
WJAS	7.07	41	5	12.2	41	5	12.2	26	1	.32	172.6
WWSW	7.07	35	0	0	35	0	0	26	0	0	0
WTAE	7.07	36	1	2.8	33	1	3.0	22	0	0	42.4
WIXZ	7.07	22	1	5.0	20	2	10.0	9	0	0	141.4
WKPA	7.07	24	0	0	19	0	0	10	0	0	0
WAMO	7.07	18	13	76.5	17	13	76.5	13	9	.91	1,082.0
WKJF	7.07	11	0	0	15	0	0	9	0	0	0
WBVP	7.07	14	0	0	15	0	0	9	0	0	0
WEEP	7.07	14	0	0	14	0	0	8	0	0	0
WESA	7.07	9	0	0	13	0	0	7	0	0	0
WJPA	7.07	12	0	0	11	0	0	7	0	0	0
WMBA	7.07	8	0	0	10	0	0	6	0	0	0
WEDO	7.07	9	0	0	9	1	11.1	6	0	0	157.0
WPIT	7.07	9	0	0	9	0	0	7	0	0	0
WNUF	7.07	NA	NA	NA	7	0	0	5	0	0	0
WLOA	7.07	9	0	0	7	0	0	5	0	0	0
WTRA	7.07	NA	NA	NA	6	0	0	1	0	0	0
WDUQ	7.07	NA	NA	NA	6	0	0	5	0	0	0

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—PITTSBURGH, PA.—Continued

SELECTED DATA CHART II.—*Employment of women*

Station	1971 Employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
KDKA	64	9	14.1	47	1	2.1	68	11	16.2	51	0	0	0
WJAS	41	9	22.2	27	0	0	41	10	24.4	26	0	0	0
WWSW	35	6	17.1	26	0	0	35	6	17.1	26	0	0	0
WTAE	36	7	19.4	25	1	4.0	33	7	21.2	22	1	4.5	.21
WIXZ	22	6	27.3	15	2	13.0	20	7	35.0	9	0	0	0
WKPA	24	7	29.2	14	0	0	19	6	31.6	10	0	0	0
WAMO	18	3	16.7	12	0	0	17	3	17.6	13	1	7.7	.43
WKJF	11	1	9.1	8	0	0	15	3	20.0	9	0	0	0
WBVP	14	4	28.6	9	1	11.1	15	4	26.7	9	1	11.1	.42
WEEP	14	2	14.3	10	0	0	14	3	21.4	8	0	0	0
WESA	9	3	33.3	6	0	0	13	4	30.8	7	0	0	0
WJPA	12	3	27.3	8	1	12.5	11	3	27.3	7	0	0	0
WMBA	8	2	25.0	4	0	0	10	1	10.0	6	0	0	0
WEDO	9	2	22.2	3	0	0	9	2	22.2	6	1	16.7	.75
WPIT	9	0	0	7	0	0	9	2	22.2	7	0	0	0
WNUF	NA	NA	NA	NA	NA	NA	7	1	14.3	5	0	0	0
WLOA	9	2	22.2	7	1	14.3	7	2	28.6	5	1	20.0	.70
WTRA	NA	NA	NA	NA	NA	NA	6	3	50.0	1	0	0	0
WDUQ	NA	NA	NA	NA	NA	NA	6	1	16.7	5	0	0	0

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—HARRISBURG/LANCASTER/YORK, PA.

Selected Data Chart I.—*Employment of blacks*

Station [1]	Percent black in SMSA	1971 employment	Blacks	Percent black	1972 employment	Blacks	Percent black	HP	HP black	HP comparison	1972 Community index Total black employment
WSBA	5.43	35	0	0	39	0	0	24	0	0	0
WHP	6.84	30	1	3.3	25	1	4.0	16	0	0	58.5
WHJB	5.43	21	0	0	20	0	0	11	0	0	0
WLAN	1.67	17	0	0	19	0	0	13	0	0	0
WGAL	1.67	18	0	0	18	0	0	12	0	0	0
WNOW	5.43	14	0	0	17	0	0	10	0	0	0
WCMB	6.84	14	0	0	17	0	0	12	0	0	0
WORK	5.43	21	0	0	17	0	0	10	0	0	0
WGSA	1.67	12	0	0	13	0	0	7	0	0	0
WKBO	6.84	12	1	8.3	11	0	0	8	0	0	0
WDAC	1.67	NA	NA	NA	10	0	0	5	0	0	0
WGET	5.43	7	0	0	8	0	0	6	0	0	0
WPDC	1.67	7	0	0	7	0	0	4	0	0	0

[1] Harrisburg: WHP, WCMB, and WKBO; Lancaster: WLAN, WGAL, WGSA, WDAC, and WPDC; York: WSBA, WHJB, WNOW, WORK, and WGET.

Note.—HP = High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—HARRISBURG/LANCASTER/YORK, PA.—Continued

SELECTED DATA CHART II.—*Employment of women*

Station [1]	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WSBA	35	4	11.4	23	0	0	39	5	12.5	24	0	0	0
WHP	25	7	28.0	20	2	10.0	25	7	28.0	16	2	12.5	.45
WHJB	21	5	23.0	12	1	8.3	20	4	20.0	11	0	0	0
WLAN	17	4	23.5	6	0	0	19	5	26.3	13	1	7.7	.29
WGAL	18	4	22.2	11	0	0	18	3	16.7	12	0	0	0
WNOW	14	2	14.2	9	0	0	17	3	17.6	10	0	0	0
WCMB	14	2	14.3	9	0	0	17	2	11.8	12	0	0	0
WORK	21	5	23.8	12	0	0	17	4	23.5	10	0	0	0
WGSA	12	3	25.0	6	0	0	13	3	23.1	7	0	0	0
WKBO	12	2	16.7	8	0	0	11	2	18.2	8	0	0	0
WDAC	NA	NA	NA	NA	NA	NA	10	2	20.0	5	0	0	0
WGET	7	2	28.6	5	0	0	8	2	25.0	6	0	0	0
WPDC	7	1	14.3	NA	NA	NA	7	1	14.3	4	0	0	0

[1] Harrisburg: WHP, WCMB, and WKBO; Lancaster: WLAN, WGAL, WGSA, WDAC, and WPDC; York: WSBA, WHJB, WNOW, WORK, and WGET.

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—JOHNSTOWN/ALTOONA, PA.

SELECTED DATA CHART I.—*Employment of blacks*

Station[1]	Percent blacks in SMSA	1971 employment	Blacks	Percent black	1972 employment	Black	Percent blacks	HP	HP black	HP comparison	Community index total black employment
WJAC	1.35	22	0	0	20	1	5.0	12	1	1.67	370.4
WVAM	.72	17	0	0	17	0	0	11	0	0	0
WFBG	.72	19	0	0	17	0	0	9	0	0	0
WCRO	1.35	14	0	0	14	0	0	7	0	0	0
WRTA	.72	12	0	0	13	0	0	8	0	0	0
WTRN	.72	10	0	0	10	0	0	3	0	0	0
WVSC	1.35	11	0	0	10	0	0	6	0	0	0
WWBR	1.35	9	0	0	8	0	0	3	0	0	0
WWSF	1.35	6	0	0	7	0	0	5	0	0	0

[1] Johnstown: WJAC, WCRO, WVSC, WWBR, and WWSF; Altoona: WVAM, WFBG, WRTA, and WTRN.

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—JOHNSTOWN/ALTOONA, PA.

SELECTED DATA CHART II.—*Employment of women*

Station [1]	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WJAC	22	7	31.8	14	2	14.3	20	7	35.0	12	2	16.7	0.48
WVAM	17	3	17.6	7	0	0	17	3	17.6	11	0	0	0
WFBG	19	8	42.1	9	0	0	17	5	29.4	9	1	11.1	.38
WCRO	14	3	21.4	6	0	0	14	4	28.6	7	0	0	0
WRTA	12	3	25.0	8	0	0	13	3	23.1	8	0	0	0
WTRN	10	2	20.0	1	0	0	10	2	20.0	3	0	0	0
WVSC	11	3	27.3	7	1	14.3	10	3	30.0	6	1	16.7	.55
WWBR	9	3	33.3	3	0	0	8	2	25.0	3	0	0	0
WWSF	6	1	16.7	4	0	0	7	2	28.6	5	1	20.0	.70

[1] Johnstown: WJAC, WCRO, WVSC, WWBR, and WWSF; Altoona: WVAM, WFBG, WRTA, and WTRN.

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—ERIE, PA.

SELECTED DATA CHART I.—*Employment of blacks*

Station	Percent black SMSA	1971 employment	Blacks	Percent black	1972 employment	Blacks	Percent black	HP	HP black	HP comparison	Community index—total black employment
WWYN	3.39	16	0	0	17	0	0	8	0	0	0
WWGO	3.39	13	0	0	13	0	0	5	0	0	0
WMDI	3.39	NA	NA	NA	8	0	0	7	0	0	0
WOTR	3.39	NA	NA	NA	6	0	0	4	0	0	0

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

SELECTED DATA CHART II.—*Employment of women*

Station	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WWYN	16	3	18.8	4	0	0	17	4	23.5	8	0	0	0
WWGO	13	1	7.7	5	0	0	13	1	7.7	5	0	0	0
WMDI	NA	NA	NA	NA	NA	NA	8	1	12.5	7	1	14.3	1.17
WOTR	NA	NA	NA	NA	NA	NA	6	1	16.7	4	0	0	0

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—READING, PA.

SELECTED DATA CHART I.—*Employment of blacks*

Station	Percent black in SMSA	1971 employment	Blacks	Percent black	1972 employment	Blacks	Percent black	HP	HP black	HP comparison	Community index total black employment
WEEU	2.23	23	0	0	23	0	0	12	0	0	0
WRFY	2.23	NA	NA	NA	20	0	0	4	0	0	0
WRAW	2.23	16	0	0	17	0	0	10	0	0	0
WHUM	2.23	16	0	0	16	0	0	9	0	0	0
WBYO	2.23	NA	NA	NA	6	0	0	1	0	0	0

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

SELECTED DATA CHART II.—*Employment of women*

Station	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WEEU	23	4	17.4	12	0	0	23	4	0	13	0	0	0
WRFY	NA	NA	NA	NA	NA	NA	20	4	20.0	13	1	7.7	.38
WRAU	16	3	18.8	10	0	0	17	3	17.6	10	0	0	0
WHUM	16	5	31.3	9	0	0	16	5	31.3	9	0	0	0
WBYO	NA	NA	NA	NA	NA	NA	6	0	0	1	0	0	0

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—SCRANTON/WILKES-BARRE, PA.[1]

SELECTED DATA CHART I.—*Employment of blacks*

Station	Place	1972 employment	Station	Place	1972 employment
WARM	Scranton	32	WYZZ	Wilkes-Barre	11
WILK	Wilkes-Barre	21	WNAK	Wilkes-Barre	10
WBAX	Wilkes-Barre	17	WPTS	Wilkes-Barre	9
WAZL	Wilkes-Barre	17	WCDL	Scranton	8
WEJL	Scranton	15	WWDL	Scranton	6
WSCR	Scranton	11	WGBI	Scranton	5
WBRE	Wilkes-Barre	11			

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[1] Scranton and Wilkes-Barre both have less than 1 percent black population in their SMSA (Scranton 0.40 percent; Wilkes-Barre 0.54 percent). (None of these stations have black employees.)

RADIO STATIONS.—SCRANTON/WILKES-BARRE, PA.[1]—Continued

SELECTED DATA CHART II.—*Employment of women*

Station[1]	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WARM	30	4	13.3	18	0	0	32	6	18.8	17	0	0	0
WILK	21	5	23.8	12	0	0	21	5	23.8	12	0	0	0
WBAX	17	5	29.4	9	2	22.2	17	5	29.4	9	1	11.1	.38
WAZL	15	6	40.0	9	2	22.2	17	6	35.3	10	3	30.0	.85
WEJL	15	2	13.3	10	0	0	15	2	13.3	10	0	0	0
WSCR	11	3	27.3	6	0	0	11	3	27.3	7	0	0	0
WBRE	11	3	27.3	6	0	0	11	2	18.2	6	0	0	0
WYZZ	10	1	10.0	NA	0	0	11	2	18.2	5	1	20.0	1.10
WNAK	9	3	33.8	6	1	16.7	10	3	30.0	7	1	14.3	.47
WPTS	6	1	16.7	5	1	20.0	9	2	22.2	7	1	14.3	.64
WCDL	8	3	37.5	5	1	20.0	8	3	25.0	5	1	20.0	.80
WWDL	NA	NA	NA	NA	NA	NA	6	1	16.7	5	1	20.0	1.20
WGBI	5	1	20.0	2	0	0	5	1	20.0	2	0	0	0

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[1] Scranton: WARM, WEJL, WSCR, WCDL, WWDL, and WGBI; Wilkes-Barre: WILK, WBAX, WAZL, WBRE, WYZZ, WNAK, and WPTS.

NOTE.—HP=High pay (the number of employees reported in the top three categories on the FCC Form 395 Annual Report).

RADIO STATIONS.—ALLENTOWN/BETHLEHEM/EASTON, PA.[1]

SELECTED DATA CHART I.—*Employment of blacks*

Station	1972 employment	Station	1972 employment
WAEB	24	WKOK	13
WEST	22	WGPA	11
WKAP	22	WHOL	9
WEEX	17		

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[1] The Allentown-Bethlehem-Easton SMSA is 1. 18 percent black. (None of these stations have black employees.)

SELECTED DATA CHART II.—*Employment of women*

Station	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WAEB	20	4	20.0	12	0	0	24	5	20.8	14	0	0	0
WEST	22	6	27.3	13	0	0	22	6	27.3	12	0	0	0
WKAP	19	4	21.1	10	1	10	22	4	18.2	16	1	6.3	.34
WEEX	17	1	5.9	12	0	0	17	1	5.9	12	0	0	0
WKOK	13	3	23.1	6	0	0	13	3	23.1	6	0	0	0
WGPA	12	3	25.0	7	0	0	11	2	13.2	6	0	0	0
WHOL	7	4	57.1	3	0	0	9	4	44.4	3	0	0	0

RADIO STATIONS.—WILMINGTON, DEL.

SELECTED DATA CHART I.—*Employment of blacks*

Station	Percent black SMSA	1971 employment	Blacks	Percent black	1972 employment	Blacks	Percent black	HP	Black HP	HP comparison	Community index—total black employed
WDEL	12.19	27	0	0	26	0	0	15	0	0	0
WAMS	12.19	21	1	4.8	22	2	9.1	14	1	.82	74.7
WILM	12.19	18	0	0	20	1	5.0	6	0	0	41.0
WTUX	12.19	10	1	10.0	10	1	10.0	5	0	0	82.0
WJBR	12.19	7	0	0	9	1	11.1	7	1	1.29	91.1
WNRK	12.19	10	0	0	9	0	0	1	0	0	0

SELECTED DATA CHART II.—*Employment of women*

Station	1971 employment	Women	Percent	HP	HP women	Percent	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WDEL	27	7	25.9	15	0	0	26	7	26.9	15	0	0	0
WAMS	21	3	14.3	13	0	0	22	4	18.3	14	1	7.1	.41
WILM	18	4	22.2	6	1	16.7	20	3	15.0	6	0	0	0
WTUX	10	1	10.0	5	0	0	10	1	10.0	5	0	0	0
WJBR	7	1	14.3	7	0	0	9	1	11.1	7	0	0	0
WNRK	10	2	20.0	1	0	0	9	2	22.2	1	0	0	0

RADIO STATIONS.—NON-SMSA RADIO STATIONS—PENNSYLVANIA/DELAWARE

Selected Data Chart I.—*Black employment*

Station	Community	Percent black in community	1971 employment	Blacks	Percent	1972 employment	Blacks	Percent	1972 black HP	Community index total black employment
WMBS	Uniontown	7.21	17	2	11.8	17	2	11.8	2	163.7
WDOV	Dover, Del	22.3	14	1	7.1	15	1	6.7	0	30.1
WHUN	Huntingdon	1.33	13	1	7.7	9	1	11.1	1	834.6
WNBT	Wellsboro	.44	11	0	0	7	1	14.3	0	3,250.0

Chart Ia.—*Stations in communities with more than 1 percent black who have no black employees in 1972*

Station	Community	Percent black in community	1972-employment
WFAR	Farrell	29.84	6
WSUX	Seaford, Del	18.8	8
WTHD	Milford, Del	12.9	9
WASP	Brownsville	11.24	10
WKST	New Castle	6.09	10
WBZY	New Castle	6.09	8
WPIC	Sharon	5.51	18
WHYL	Carlisle	5.31	11
WIOO	Carlisle	5.31	11
WCHA	Chambersburg	4.86	14
WCBG	Chambersburg	4.86	13
WMGW	Meadville	4.40	11
WVPO	Stroudsburg	3.50	16
WCVI	Connellsville	3.50	10
WRAK	Williamsport	2.95	12
WWPA	Williamsport	2.95	11
WLYC	Williamsport	2.95	10
WMAJ	State College	2.94	13
WRSC	State College	2.94	12
WEEO	Waynesboro	2.05	10
WAYZ	Waynesboro	2.05	6
WFRA	Franklin	1.94	9
WSHP	Shippensburg	1.34	8
WPPA	Pottsville	1.31	19
WPAM	Pottsville	1.31	12
WMLP	Milton	1.10	10

CHART Ib.—*Stations in communities with less than 1 percent black population (none have black employees)*

Station	Community	1972 employment	Station	Community	1972 employment
WLBR	Lebanon	21	WMPT	South Williamsport	8
WCPA	Clearfield	14	WESB	Bradford	8
WDAD	Indiana	13	WSEW	Selingsgrove	8
WBPZ	Lock Haven	13	WBFD	Bedford	8
WCNR	Bloomsburg	13	WPME	Punxsutawney	8
WHLN	Bloomsburg	11	WMBT	Shenandoah	7
WISR	Butler	12	WLEM	Emporium	7
WBUT	Butler	7	WTIV	Titusville	7
WMRF	Lewistown	12	WJUN	Mexico	6
WNAE	Warren	11	WACB	Kittanning	6
WHVR	Hanover	10	WBLF	Bellefonte	6
WISL	Shamokin	9	WPHB	Philipsburg	6
WGRP	Greenville	9	WTTC	Towanda	6
WYNS	Lehighton	9	WFRM	Coudersport	5

RADIO STATIONS.—NON-SMSA RADIO STATIONS—PENNSYLVANIA/DELAWARE

SELECTED DATA CHART II.—*Employment of women*

Station	Community	1971 employment	Women	Percent	HP	HP women	Percent
WLBR	Lebanon	21	3	14.3	16	1	6.3
WPPA	Pottsville	16	5	31.3	8	1	12.5
WPAM	Pottsville	11	3	27.3	5	0	0
WPIC	Sharon	NA	NA	NA	NA	NA	NA
WMBS	Uniontown	17	5	29.4	12	1	8.3
WVPO	Sroudsburg	16	5	31.3	10	0	0
WDOV	Dover, Del	14	3	21.4	8	0	0
WCPA	Clearfield	14	4	28.6	9	1	11.1
WCHA	Chambersburg	14	3	21.4	8	0	0
WCBG	Chambersburg	14	3	21.4	11	1	9.0
WDAD	Indiana	14	2	14.3	8	0	0
WBPZ	Lock Haven	13	2	15.4	2	0	0
WMAJ	State College	14	4	29.6	8	0	0
WRSC	State College	14	3	23.1	9	1	11.1
WCNR	Bloomsburg	14	3	21.4	9	1	11.1
WHLM	Bloomsburg	13	3	23.1	8	0	0
WRAK	Williamsport	12	3	25.0	8	0	0
WWPA	Williamsport	10	3	30.0	8	1	11.1
WLYC	Williamsport	9	2	22.2	6	0	0
WISR	Butler	13	2	15.4	5	0	0
WBUT	Butler	9	3	33.3	4	0	0
WMRF	Lewistown	12	3	25.0	7	0	0
WNAE	Warren	12	3	25.0	9	2	22.2
WMGW	Meadville	12	3	25.0	9	1	11.1
WHYL	Carlisle	10	1	10.0	6	0	0
WIOO	Carlisle	NA	NA	NA	NA	NA	NA
WMLP	Milton	NA	NA	NA	NA	NA	NA
WEEO	Waynesboro	8	1	12.5	NA	NA	NA
WAYZ	Waynesboro	5	0	0	0	0	0
WHVR	Hanover	9	2	22.2	0	0	0
WCVI	Connellsville	NA	NA	NA	NA	NA	NA
WKST	New Castle	11	3	27.3	NA	NA	NA
WBZY	New Castle	9	1	11.1	6	0	0
WASP	Brownsville	12	2	16.7	7	0	0
WTHD	Milford, Del	10	2	20.0	7	0	0
WHUN	Huntingdon	13	6	46.2	NA	NA	NA
WFRA	Franklin	8	2	25.0	5	0	0
WISL	Shamokin	9	3	33.3	2	0	0
WGRP	Greenville	9	1	11.1	7	0	0
WYNS	Lehighton	6	3	50.0	3	2	66.6
WSHP	Shippensburg	8	2	25.0	3	0	0
WSUX	Seaford, Del	8	1	12.5	6	0	0
WMPT	So. Williamsport	NA	NA	NA	NA	NA	NA
WESB	Bradford	8	1	12.5	7	0	0
WSEW	Selinsgrove	8	3	37.5	5	0	0
WBFD	Bedford	10	2	20.0	8	0	0
WPME	Punxsutawney	7	2	28.5	4	0	0
WMBT	Shenandoah	7	1	14.3	4	0	0
WNBT	Wellsboro	11	1	9.1	3	0	0
WLEM	Emporium	7	3	42.9	5	2	40.0
WTIV	Titusville	7	2	28.6	4	0	0
WJUN	Mexico	6	0	0	4	0	0
WFAR	Farrell	6	2	33.3	2	0	0
WACB	Kittanning	7	1	14.3	5	0	0
WBLF	Bellefonte	6	1	16.7	2	0	0
WPHB	Philipsburg	NA	NA	NA	NA	NA	NA
WTTC	Towanda	NA	NA	NA	NA	NA	NA
WFRM	Coudersport	8	1	12.5	3	0	0

SELECTED DATA CHART II.—*Employment of women*—Continued

Station	Community	1972 employment	Women	Percent	HP	HP women	Percent	HP comparison
WLBR	Lebanon	21	3	14.3	16	1	14.3	0.44
WPPA	Pottsville	19	6	31.6	10	1	10.0	.32
WPAM	Pottsville	11	3	27.3	5	0	0	0
WPIC	Sharon	18	3	16.7	15	1	6.7	.40
WMBS	Uniontown	17	5	29.4	12	1	8.3	.28
WVPO	Stroudsburg	16	5	31.3	8	0	0	0
WDOV	Dover, Del	15	3	20.0	9	0	0	0
WCPA	Clearfield	14	4	28.6	9	1	11.1	.39
WCHA	Chambersburg	14	3	21.4	8	0	0	0
WCBG	Chambersburg	13	3	23.1	10	1	10.0	.43
WDAD	Indiana	13	2	15.4	7	0	0	0
WBPZ	Lock Haven	13	2	15.4	8	0	0	0
WMAJ	State College	13	3	23.1	10	1	10.0	.43
WRSC	State College	12	3	25.0	8	2	25.0	1.00
WCNR	Bloomsburg	13	3	23.1	8	1	12.5	.54
WHLM	Bloomsburg	11	3	27.3	6	0	0	0
WRAK	Williamsport	12	3	25.0	8	0	0	0
WWPA	Williamsport	11	3	27.3	9	1	20.9	.41
WLYC	Williamsport	10	2	20.0	8	1	12.5	.63
WISR	Butler	12	2	16.7	4	0	0	0
WBUT	Butler	7	2	28.6	2	0	0	0
WMRF	Lewistown	12	3	25.0	9	2	22.2	.88
WNAE	Warren	11	2	18.2	8	1	12.5	.68
WMGW	Meadville	11	3	27.3	6	0	0	0
WHYL	Carlisle	11	1	9.1	8	0	0	0
WIOO	Carlisle	11	2	18.2	3	0	0	0
WMLP	Milton	10	1	10.0	7	0	0	0
WEEO	Waynesboro	10	2	20.0	5	0	0	0
WAYZ	Waynesboro	6	1	16.7	4	0	0	0
WHVR	Hanover	10	2	20.0	6	0	0	0
WCVI	Connellsville	10	2	20.0	6	0	0	0
WKST	New Castle	10	3	30.0	6	0	0	0
WBZY	New Castle	8	1	12.5	6	0	0	0
WASP	Brownsville	10	1	10.0	7	0	0	0
WTHD	Milford	9	2	22.2	6	0	0	0
WHUN	Huntingdon	9	2	22.2	6	0	0	0
WFRA	Franklin	9	1	11.1	6	0	0	0
WISL	Shamokin	9	3	33.3	2	0	0	0
WGRP	Greenville	9	2	22.2	6	0	0	0
WYNS	Lehighton	9	3	33.3	5	1	20.0	.60
WSHP	Shippensburg	8	2	25.0	3	0	0	0
WSUX	Seaford, Del	8	1	12.5	5	0	0	0
WMPT	South Williamsport	8	1	12.5	1	0	0	0
WESB	Bradford	8	1	12.5	7	0	0	0
WSEW	Selinsgrove	8	3	37.5	5	0	0	0
WBFD	Bedford	8	2	25.0	6	0	0	0
WPME	Punxsutawney	8	3	37.5	5	1	20.0	.40
WMBT	Shenandoah	7	1	14.3	4	0	0	0
WNBT	Wellsboro	7	1	14.3	2	0	0	0
WLEM	Emporium	7	3	42.9	5	1	20.0	.47
WTIV	Titusville	7	2	28.6	5	1	20.0	.70
WJUN	Mexico	6	0	0	4	0	0	0
WFAR	Farrell	6	2	33.3	2	0	0	0
WACB	Kittanning	6	1	16.7	4	0	0	0
WBLF	Bellefonte	6	1	16.7	3	0	0	0
WPHB	Philipsburg	6	3	50.0	3	0	0	0
WTTC	Towanda	6	2	33.3	4	1	25.0	.75
WFRM	Coudersport	5	1	20.0	3	0	0	0

Pennsylvania/Delaware Renewals (Programming)

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Once again the Commission delegates to its staff the renewal, as if by rote, of the licenses of a number of stations in Pennsylvania and Delaware that fail to meet even minimal standards in the areas of news, public affairs, or other non-entertainment programming.

Once again I dissent.

It is a well-known, if unfortunate, fact that this Commission has never been able to agree upon a set of minimal public interest programming standards for broadcast licensees. Even though I feel it is impossible to "quantify" the public starvation in the area of responsible public-interest programming, some standards, any standards, would be refreshing and welcome. Entering the vacuum the rest of the Commission had refused to fill, former Commissioner Kenneth Cox and I proposed the 5–1–5 standard that is now universally accepted as the "subsistence" level beneath which no station's audience should be required to suffer. Licensees, under this standard, would be required to program at least 5% news, 1% public affairs and 5% other non-entertainment programming. 14 F.C.C. 2d 1 (1968). Since the vast majority of licensees propose to devote 30% or more of their airtime to commercials, it can be seen that this standard is minuscule indeed. Even absent a petition to deny or a competing application, no station should be renewed unless such standards could be met. Yet this renewal package finds another two dozen stations falling below these levels in one or more of the areas of concern.

Fortunately for the ultimate survival of the regulatory process, the *public* is also concerned about that little thing called "public interest," and it is no coincidence that some 16 of these very stations are on a deferred renewal status, most facing petitions to deny. Nevertheless, the following eight stations have been granted renewals today, and as to them I dissent:

Proposals of less than five percent news

	Previously proposed	Actually carried	Now proposed
	Percent	*Percent*	*Percent*
WTPA-TV, Harrisburg, Pa	5.0	4.5	4.5

Proposals of less than one percent public affairs

(There are three stations in this category, and all are on deferred status.)

Proposals of less than five percent other

WGBI	Scranton, Pa.
WKVA	Lewistown, Pa.
WQTW	Latrobe, Pa.
WRAW	Reading, Pa.
WRSC	State College, Pa.
WJET-TV	Erie, Pa.
WTPA-TV	Harrisburg/York/Lebanon, Pa.

In addition to minimal proposed standards of public interest programming, the Commission seems also to have abandoned its inquiry into licensees' "promise vs. performance" for purpose of evaluating unopposed applications for renewal. For although no stations are noted in the renewal package as having actually performed at a lower level of public service than originally promised, the data in the record indicates the failure of a number of stations to live up to even their own meager promises in areas of importance to the public. See, for example, the news programming of station WTPA-TV, Harrisburg, Pa., noted above. In some cases, indeed, the station seems to have performed at a considerably lower level than promised, as with station WTAF-TV, Philadelphia, Pa., which promised 8.5% news, but delivered only 4.8%, and *now* proposes a mere 1.8%. WTAF is currently deferred under a petition to deny, but how many others were granted with similar deficits?

The Commission's performance—despicable enough in the past—has been getting worse. If the Commission won't do the job public and broadcasters alike have no option but to suffer even more of the burden of license renewal challengers.

F.C.C. 72-659

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MARK LANE
Concerning Fairness Doctrine Re Station
KTLA-TV, Los Angeles, Calif.

JULY 19, 1972.

TRACY A. WESTEN, ESQ.,
Stern Community Law Firm,
2005 L Street NW.,
Washington, D.C. 20036

DEAR MR. WESTEN: This refers to a complaint and request for declaratory ruling[1] filed by you on behalf of Mark Lane (1) alleging that Station KTLA-TV, Los Angeles, California, deleted certain comments of Mr. Lane, thus engaging in censorship in violation of the First Amendment and the Communications Act of 1934; (2) requesting the Commission to notify licensees that they may not "blip out" or otherwise censor the comments of guests on talk programs when such comments fall short of "illegal" speech and the remainder of the program is broadcast without editing; and (3) requesting the Commission to require KTLA-TV to provide Mr. Lane with time to convey the content of his deleted remarks.

I. COMPLAINT

The complaint alleges the following as giving rise to this complaint: Jane Fonda and Mark Lane were invited to appear on "The Virginia Graham Show" to discuss the Vietnam war and the Movement for a Democratic Military. In an apparent attempt to balance these views, representatives of the armed forces, the John Birch Society, and Students for a Democratic Society were invited to ask questions from the audience. "During the show's taping, a Mr. John Cole rose from the audience, described himself as an 'agent' for a governmental intelligence agency . . . and proceeded to attack the 'Movement for a Democratic Military' in derogatory and critical terms. . . ." Mr. Lane then came on stage and stated that he had written *Conversations with Americans*, a book on "war crimes," and that he had recently interviewed Mr. Cole. Mr. Lane stated that during his interview with Mr. Cole, Mr. Cole indicated that at the "Interrogation, Prisoner of War School" at Fort Meade, Maryland and Fort Holabird, Maryland, he had been trained to use torture to extract information from prisoners and that he had admitted the use of those techniques to torture and kill Vietnamese in order to obtain information. Mr. Cole did not deny any of Mr. Lane's statements, but rather said the story had something to do with his "cover." Mr. Lane replied that he had obtained signed affidavits and releases from Mr. Cole as well as tape recordings and films of the interview which he would make available to anyone desiring confirmation. Mr. Lane repeated this offer to the producers of "The Virginia Graham Show" after the taping of the show.

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[1] Section 1.2 of the Commission's Rules state that "The Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."

Mr. Steve Jaffe, press agent for Miss Fonda, attended a prescreening of the program and, at that time, the show was "completely intact—without sound failures or deletions of dialogue of any kind. . . ." When the program was broadcast by KTLA-TV (on June 23, 1970), it proceeded normally until Mr. Lane was introduced, at which time the audio portion of the program went silent. An off-screen voice stated, "We are having difficulty with the audio portion of our program. Please bear with us." When Mr. Lane's "silent" statement was finished a commercial was presented and the sound returned. The next day Mr. Jaffe and Mr. Lane made telephone calls which revealed that the deletion was not due to technical difficulties but was the result of a "programming decision" by the KTLA-TV management. The producer of "The Virginia Graham Show" stated he did not delete the material and a KTLA-TV employee said the deletion was made by the KTLA-TV Program Director.

The complainant suggests that the incident related above may be only one example of a general policy by KTLA-TV to delete comments which it does not like. The complaint cites two other alleged instances. In one, Mr. Jaffe states that Mr. Lane was subsequently invited to appear on the "Robert Dornan Show," but the producer of the show said he would first check with KTLA-TV's Program Director because a "controversial guest" might result in "static" from the station. The complaint states Mr. Lane was not allowed to appear because the KTLA-TV Program Director feared Mr. Lane "might say something they would have to cut out—as they did on 'The Virginia Graham Show.' " The complainant also states that the station's complaint file contained a letter from a listener who complained that he was watching a discussion about marijuana on the "Steve Allen Show"; that when one guest began to express views "counter to some of the 'safer,' more conventional views already expressed" he was "cut off by a commercial, following which the screen went black and the station put up a 'please stand by—technical difficulties' sign"; and that when the program was resumed the show was ending.

II. LICENSEE'S RESPONSE

In response to the complaint, the licensee states that it does not produce, have ownership interest in, or determine the content of "The Virginia Graham Show." Regarding the deletion of Mr. Lane's remarks, the licensee states that the Director of Programming was notified by RKO General, the owner of the program, that Mr. Cole had threatened a libel suit if certain of Mr. Lane's statements were broadcast. A text of Mr. Lane's statements was provided to the station's attorney who stated that he believed that the remarks were defamatory per se and advised the station that it should either delete the audio portion of the statement or not carry the program. The attorney stated that because the station had "been put on notice by Mr. Cole, KTLA could not evoke the retraction statute and the station would be exposing itself to substantial punitive damages." [2] The licensee states the issue is not freedom of speech but rather "whether a station has the right, after consulting with competent counsel, to eliminate matter which is defamatory per se where a law suit has been threatened. . . ."

The licensee states that since the broadcast occurred almost a year prior to the Commission's inquiry,[3] neither the staff announcer nor the duty director can recall the circumstances surrounding the announcement made during the twenty-five second deletion of the audio portion of the program. The licensee states that although the Program Department did not order such an announcement to be made, the apparent explanation would be that the staff announcer was unaware of the deletion and, since technical difficulty is the usual reason for loss of the audio portion of program, the announcer assumed that to be the case in this situation and made the announcement to that effect.

The licensee has also submitted statements by members of its staff and its attorney regarding the other alleged incidents cited in the complaint. The material indicates that Mr. Lane did appear on the "Robert K. Dornan Show" on December 13 and December 20, 1970, and that no cuts were made during the remarks about marijuana on the "Steve Allen" program but rather technical difficulties caused the screen to go blank.

The licensee has also submitted a letter which indicates that prior to the taping of "The Virginia Graham Show," Mr. Cole wrote to Mr. Lane revoking the permission which he had granted to Mr. Lane to use the interview and stating that all statements made therein were false.

III. COMPLAINANT'S REPLY

In reply to the licensee's response the complainant asserts that the licensee did not dispute the complainant's position on improper audio censorship; that under California law Mark Lane did not slander Mr. Cole and therefore the licensee could not be held liable for the broadcast of such nonslanderous statements [4]; that Mr. Lane's First Amendment right to speak over the air waves controlled by KTLA-TV should receive the same degree of protection that the *New York Times Co.* v. *Sullivan* case, 376 U.S. 254 (1964), provides to KTLA-TV against civil liabilities; that KTLA–TV has not shown that its "censorship" was reasonable; and that KTLA–TV's "censorship" was apparently motivated by a reluctance to afford Mr. Cole rebuttal time under the personal attack doctrine, or to resist a frivolous defamation suit in court.

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[2] The licensee deleted the italic portion of the following statement by Mr. Lane:

> "MARK LANE—I would like to comment on the last gentleman who asked the question because I conducted many hours of interviews with him—yeh, with Mr. Cole. I'm sorry he didn't tell everyone the same things that he told me in the tape recording and signed for release *and that is that he was a prisoner of war interrogator in Viet Nam for the American Army—that he participated in torturing to death up to 200 people while he was in Viet Nam. And I'm sorry that he didn't tell everyone about his activities. Because I think we could have learned a lot about the American presence there and he also could have told us how he was trained to use electrical methods. . . .*"

[3] The program was aired in June 1970. The complaint was not filed until May 1971.

[4] Mr. Westen has submitted numerous references to the California Civil Code and to applicable court cases and this detailed information as well as all other pleadings in this case are on file in the Commission's Washington, D.C. office and are available for public inspection.

The complainant contends that there are several reasons why a licensee may not delete remarks—even defamatory—of a guest on a talk-discussion show and cannot be held liable for their broadcast; for example, if the person attacked is present and able to rebut or deny the charges, and, in any event, he may request time to respond under the Commission's personal attack rules. The complainant asserts that the Supreme Court "has acknowledged that the right to respond, whenever a feasible alternative, takes precedence over the right to recover damages against the public medium chosen." He cites the following language from *Rosenbloom* v. *Metromedia*, 403 U.S. 29, 47 (1971), n. 15:

> ". . . Constitutional adjudication must take into account the individual's interest in access to the press as well as the individual's interest in preserving his reputation, even though libel actions by their nature encourage a narrow view of the individual's interest since they focus only on situations where the individual has been harmed by undesirable press attention. A constitutional rule that deters the press from covering the ideas or activities of the private individual thus conceives the individual's interest too narrowly."

IV. DISCUSSION

This complaint questions the right of the licensee to delete a portion of Mr. Lane's comments and raises issues as to the Commission's proper role under such circumstances.

In a recent case that raised issues similar to those in this complaint the Commission discussed the scheme of the Communications Act of 1934, as follows:

> "Under Section 3(h), the Congress explicitly defines a broadcast licensee as not a common carrier. He can and must make reasonable judgments as to the programming presented over his facilities. Indeed, that is his affirmative responsibility under the Act—and in a real sense it is the essence of our broadcasting system, which rests its confidence on the independent decisions of many entrepreneurs and not on an agency of the Federal Government." Letter to *Honorable William H. Harsha*, 31 FCC 2d 847 (1971).

Were a licensee not allowed to make reasonable programming decisions and "were deemed to be a common carrier, having to present any matter brought to him which was not obscene, etc., the result would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt." Letter to *Honorable Richard L. Ottinger* printed as an attachment to the letter to *Honorable William H. Harsha, supra.*

However, a licensee's programming decisions must be based on his obligation to serve the needs and interests of his community, and we have stated we would be concerned if a licensee rejected "a presentation of a view on the basis of a policy that he never presented views with which he disagreed, or views of women, or blacks, or red-headed men." *Ottinger, supra.* (See also letter to *Albert H. Kramer* (Back Alley Theater) 25 FCC 2d 705 (1970). In the Back Alley Theater case at page 707 we stated:

> ". . . a serious public interest question would be presented if in its over-all programming a licensee ignored the needs of a substantial segment of his community or, for example, arbitrarily refused to present members of an ethnic group, or their views. Refusal to present members of such a group, either as such or in integrated situations with members of other groups, would constitute discrimination in programming. It is not enough, however, simply to state that a speaker has been censored because a licensee has edited or rejected a particular piece of program matter. Such exercise of the licensee's judgment in programming occurs thousands of times a year, as to which claims could be made that the licensee was serving some improper purpose or policy. Absent substantial extrinsic evidence of motives inconsistent with the public interest, the Commission should not and will not intervene in this continuing program practice."

Regarding your First Amendment claim, the Constitution does not guarantee any person the use of any particular platform for the expression of his views and we believe that the licensee in this case was neither obligated to broadcast the syndicated program on which Mr. Lane was a guest, nor to present his appearance without editing it. The Commission expects a licensee to maintain control over, and assume responsibility for, all material broadcast. In the present case, the licensee states and its counsel confirms that deletion of Mr. Lane's remarks was based upon counsel's advice that the remarks were defamatory per se and their broadcast would expose the licensee to substantial punitive damages. Thus, the licensee's decision to delete the remarks does not appear to have been arbitrary, capricious or based upon a policy of excluding views with which it disagreed. See letters to *Harsha* and *Kramer*, supra. Since the licensee acted because of advice of counsel, we do not intend to become involved in arguments as to whether in fact the licensee would have been subject to recovery of damages had it broadcast the material.

With regard to the announcement made during the silent period, serious questions would be raised concerning a licensee's qualifications if it deleted material and deliberately misrepresented to the public that the interruption was caused by technical difficulties. However, we have no evidence here that the licensee either authorized or condoned such announcements, and in view of the passage of time since the 1970 broadcast, we believe that additional inquiry into this aspect of the complaint would not be likely to provide any further substantial evidence.

Based on the foregoing, we cannot find that the licensee acted unreasonably or in violation of the First Amendment or the Communications Act. Therefore, no further Commission action appears warranted and the relief you request IS DENIED.

Commissioner Johnson dissenting and issuing a statement; Commissioner Reid absent; Commissioner Hooks not participating.

By Direction of the Commission,

Ben F. Waple, *Secretary.*

Dissenting Opinion of Commissioner Nicholas Johnson

On June 4, 1970, Mark Lane, attorney, author, and petitioner in this case, appeared with actress Jane Fonda on the "Virginia Graham Show" to discuss the Vietnam War and the Movement for a Democratic Military. The show was aired in Los Angeles by KTLA–TV. Representatives from the armed forces, the John Birch Society, and the Students for a Democratic Society were invited by the show's producers to ask questions from the audience.

During the show's taping, and prior to Mr. Lane's introduction, Mr. John Cole rose from the audience, described himself as an "agent" for an unidentified governmental intelligence organization, and sharply criticized the members and objectives of the Movement for a Democratic Military. After being introduced, Mr. Lane advised the audience that he had previously interviewed Mr. Cole while researching a book on "war crimes" entitled *Conversations with Americans.*

During that interview, said Mr. Lane, Cole admitted that he had been trained by the government to use torture to extract information from prisoners. According to Lane, Cole also admitted to having put his learning to use in Vietnam.

Unlike the studio audience, none but an accomplished lip-reader in the greater television audience was able to comprehend Mr. Lane's report when the show was aired some two weeks later. The station deleted Lane's words, leaving the visual portion of the episode intact while an off-stage voice explained:

> "We are having technical difficulty with the audio portion of our program. Please bear with us."

The majority has, indeed, borne with the station. Yet, the majority is fully aware that KTLA's audio equipment was functioning without fault, that the station deceived the viewing public, and that the station's present justification for censoring Mr. Lane is questionable at best. I dissent.

The majority notes that a licensee's programming decision may not contravene the public interest. I agree. Yet, the majority then suggests that so long as a licensee does not embark upon a "policy" of discriminatory programming, a policy which the complainant must establish by "substantial extrinsic evidence," the public interest is not violated.

The majority thus affords licensees broad leeway to engage in censorship. Presumably, my fellow Commissioners would have no problems with a licensee who censors only occasional speakers with whose views the licensee does not agree. For sporadic censorship might not constitute the sort of "policy" to which the majority refers.

With this I cannot agree.

Not only does such an approach ignore the First Amendment and afford licensees the power to impose their moral and social opinions upon the viewing public, but this approach, insofar as I am aware, was rejected in an earlier decision by this Commission. See *Letter to Albert H. Kramer*, 25 F.C.C. 2d 705 (1970), where the Commission appeared to concede that even one incident of program discrimination would abridge the public interest.

Now the Commission appears to back away from its earlier, more rational approach. Indeed, the Commission demands that a petitioner prove, by "substantial extrinsic evidence," the existence of the licensee's policy of program discrimination. As I have tried to point out on an earlier occasion, see my dissent in the *Kramer* case, *supra*, at 713, the majority's reliance on the *Hunger in America* case, 20 F.C.C. 2d 143 (1969), for its "substantial extrinsic evidence" rule is misplaced. *Hunger in America* involved the Commission's response to the problem of alleged news-staging, a problem which is very different from broadcast censorship of invited guests.

In any event, the petitioner in this case has, in my judgment, offered substantial extrinsic evidence of KTLA's "policy" of program discrimination. The petitioner has presented an affidavit asserting that KTLA refused to allow Mr. Lane to appear on the "Robert Dornan Show" for fear that he, Mr. Lane, might be too controversial. Petitioner has also submitted a letter from KTLA's files complaining about the station's apparent censorship of a young attorney who attempted to espouse "unconventional" views on the subject of marijuana.

Curiously, the majority finds that Mr. Lane, did, in fact, appear on the Dornan show and that the deletion of the marijuana discussion was the result of a technical failure. But, there has been no hearing on these questions, and at the very least, the facts must remain in dispute. One wonders how the majority and the staff managed, in so casual a fashion, to resolve these disputed issues in the licensee's favor.

Though I believe that the petitioner has met the majority's purported test by providing substantial evidence of KTLA's continuing pattern of program discrimination, I remain troubled by that "test." One instance of program discrimination should merit our disapprobation, for such censorship cannot possibly serve the public interest. The licensee's censorship of Mr. Lane during the "Virginia Graham Show" constitutes such program discrimination irrespective of the excuse now put before us by KTLA.

The majority admits, as it must in view of the licensee's own concession, that there were no audio difficulties during the Graham show. The station *now* argues that the explanation conveyed to the public was false and that the real reason for deleting Mr. Lane's remarks was the assertion by the station's attorney that Mr. Lane's comments constituted defamation *per se*.

The majority accepts this explanation and also sees no problem with the licensee's misrepresentation to the public. I have substantial difficulty with both conclusions.

First, it is inconceivable to me that the station could have believed, in good faith, that Lane's remarks constituted defamation *per se*. Lane never accused Cole of committing atrocities. Rather, Lane merely reported what Cole had told him during an interview. The only question, then, insofar as defamation was concerned, was whether Cole actually said what Lane was attempting to repeat.[1]

Cole never denied making the statements reported by Lane. Indeed, Cole admitted in his affidavit that he had made similar statements to *People's World* magazine which published his account in December, 1969.

Further, the licensee never accepted Mr. Lane's offer to exhibit films of his interview with Cole—films which Lane contends would have established the truth of his report concerning Cole's statements. The station's refusal to view these films illustrates full well the station's unwillingness to determine the facts and, hence, to avoid any possible legal problems raised by the station's attorney.[2]

There is, then, no evidence of KTLA's good faith. Yet, the majority accepts the licensee's excuse without reservation.

Second, the majority blithely accepts the station's assertion that the fraudulent explanation given to the public for the deletion of Mr. Lane's words was unintentional. The majority apparently adopts a presumption that a licensee who misrepresents itself to the public does not do so intentionally. For, the majority asserts, the complainant has not proved otherwise. I would have thought that the licensee's intent would be presumed, with the burden of proving the contrary on the station.

A licensee has an affirmative duty to deal candidly with the viewing public. If it is going to persist in censoring views with which it disagrees, the station must at least advise the public of its true reasons. This was obviously not done here. The licensee contends that the program director did not order the fraudulent announcement, that he had not ordered any explanation for the deletion.

This is sufficient for the majority. In the future, if the majority is consistent, all a program director bent on censorship need do is deny responsibility for the false representations given by his station to the public. At the very least, I should think that the station's program director must have a duty to be aware of his station's censorship and must, therefore, have an affirmative duty to see to it that the public is properly informed.

All of the foregoing is merely to illustrate my objections to the majority's rationale and to its disregard for the public interest.

Perhaps more fundamental is my disagreement with the majority's underlying assumptions in this highly complex and sensitive area. As I have argued in the past, see my dissent in *Letter to Ottinger*, 18 P & F Radio Reg. 2d 1031 (1970), I believe it is long past time for us to begin a general policy review of the existing judicial precedent, past Commission decisions, and general communications and First Amendment policies affecting cases like this.

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[1] Under the California statutory and common law, truth is a defense to a charge of defamation. See, *e.g.*, Cal. Civ. Code § 46; *Emde* v. *San Joaquin County Central Labor Council*, 23 Cal. 2d 146, 143 P. 2d 20 (1943); *Jeffers* v. *Screen Extras Guild, Inc.*, 162 Cal. App. 2d 717, 328 P. 2d 1030 (1958).

[2] It is unlikely that KTLA could have been held liable for defamation unless it broadcast Lane's statements in "knowing or reckless" disregard for the truth. *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1965); *Rosenbloom* v. *Metromedia*, 403 U.S. 29 (1971). Had KTLA viewed the films which Mr. Lane claimed would verify the truth of his remarks, KTLA could not have acted in reckless disregard for the truth. At the very least, then, the licensee should have a duty to investigate whenever it censors a guest's comments on the ground that it believes those comments may be defamatory.

Further, the *Rosenbloom* case strongly indicates that even if a broadcast station permits a party to make a false statement over the air, the station will not be subject to damages if it affords the injured party an opportunity to respond. *Rosenbloom, supra*, at 17–18 n. 15. In the future, therefore, the Commission should give little credence to a station's claims of possible defamation.

The majority notes that the licensee is not a "common carrier" under section 3(h) of the Communications Act and that, as a result, the licensee is not obligated either to afford access to Mark Lane or to refrain from "editing" his opinions. Access is not at issue in this case; the only question is whether the licensee is under any First Amendment constraints when it seeks to censor a person to whom it has already granted access.

The majority's convenient contention that, under section 3(h), the licensee is not a "common carrier" merely begs the question. In my view, the legislative history reveals that the statutory reference to "common carrier" refers only to the regulation of rates charged by stations. But even if the majority's interpretation were correct, and if section 3(h) was intended by Congress as a means of shielding broadcasters from Constitutional imperatives, then the majority should consider whether section 3(h) can be squared with the First Amendment under the *Red Lion* case, *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969), and the more recent *Business Executives Move for Vietnam Peace* v. *F.C.C.*, F. 2d (D.C. Cir. 1971).

The thrust of those cases is that television stations are imbued with at least a partial governmental function, and that they are therefore subject to First Amendment principles. I would think this especially true of governmentally licensed stations when they broadcast "talk shows" which serve as forums for the airing of various forms of public expression. For, in such circumstances, "Conduct that is formally private may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action." *Evans* v. *Newton*, 382 U.S. 296, 299 (1966).

I repeat, the issue before us is not whether Mark Lane has a legally enforceable "right" to force his way onto the stage of the "Virginia Graham Show" and leave such views as he pleases on video tape for national distribution by the show's owners. The issue is whether, having invited Mr. Lane on the show in the first place for the expression of views generally known to the producer, the show (or a station broadcasting it) can selectively censor ideas, facts and opinions from the tape because they do not square with those of the management.

The Commission should consider this increasingly important problem in broadcast regulation. It should attempt to develop an analytic scheme whereby broadcast licensees, like other governmental bodies, might be subject to the doctrine against prior restraints of expression. Such an approach would surely reduce the broadcast industry's censorship of opinions between the time they are taped and the time they are aired.

But the majority has clearly ignored this approach and has declined to deal in any but the most superficial manner with the very real problem of corporate censorship in this country.

Hopefully, the courts will not abide either the majority's reasoning or its result. In any event, I cannot. I dissent.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MR. AND MRS. JOHN EIGHMEY, IOWA CITY, IOWA
Concerning Fairness Doctrine Re Station WMT

AUGUST 3, 1972.

MR. AND MRS. JOHN EIGHMEY,
225 East Fairchild,
Iowa City, Iowa 52240

DEAR MR. AND MRS. EIGHMEY: This is in reply to your complaint against Radio Station WMT.

You state that the three national television networks (ABC, CBS and NBC) broadcast President Nixon's State of the Union address on January 20, 1972 at approximately 12:00 p.m. CST and presented the Democratic Party's reply to that address on January 21, at a comparable time and for a comparable duration of time; that Radio Station WMT broadcast the live CBS network feed of the President's address but failed to broadcast the CBS network Democratic Party Reply "at the time which was deemed appropriate by the networks and which was comparable to that used by the President"; that Radio Station WMT broadcast the reply at 8:00 p.m. on January 21, 1972, but that the size and composition of the audience was not the same as that which heard the President's address; that the station delayed the CBS network January 21, 1972, 11:00 a.m. CST broadcast until 8:00 p.m. CST that same day because it "had commercial commitments which had to be met and that these commitments would be interfered with by the Democratic Party broadcast;" that Radio Station WMT did broadcast approximately seven minutes of the "midday" CBS Network feed of the Democratic Party reply before terminating the program; and that the station did not announce until 90 minutes later that the program would be broadcast at 8:00 p.m. You state that similar commercial commitments the previous day did not interfere with the President's State of the Union address. You conclude:

> We urge the members of the Federal Communications Commission and their staff to investigate the questions of whether and how radio station WMT will give the Democratic Party access to its audience during a time comparable to that which they gave to the President. This request is made because comparability of audience size and composition are crucial issues that must not be ignored if access to mass media is to be meaningful.

In response to your complaint, the licensee states that Radio Station WMT broadcast the live CBS Radio Network feed of the President's address between 11:30 a.m. and 12:12 p.m. CST; that "this was consistent with WMT's longstanding practice of broadcasting live the annual Presidential State of the Union address;" and that it was later notified by CBS that it would offer its affiliates a 60-minute Democratic Party reply to be broadcast between 11:00 a.m. and 12:00 p.m. CST, on January 21, 1972. Licensee states that:

> WMT determined, in the reasonable exercise of its programming judgment, not to broadcast this program live but rather to tape it so that consideration could be given as to whether it should be broadcast at a later time. In fact, this program was broadcast in its entirety by WMT between 8:00 p.m. and 8:59 p.m. CST on January 21, 1972.

Licensee further states that WMT broadcast three and one half minutes of the Democratic Party reply at 11:00 a.m. CST due to a mistake by a station announcer who inadvertently switched to the live CBS Network feed instead of the local program scheduled for broadcast at that time; that at 12:35 p.m. CST, it announced that the reply would be broadcast at 8:00 p.m. CST that same day; that WMT presented contrasting views to the President's message the day of its broadcast; and that it has met its obligations under the fairness doctrine.

In reply to licensee's opposition, you state that the "WMT decision-makers" should not be allowed to act as censors in determining whether to broadcast the Democratic Party reply, and that "there was no reason for the WMT decision-makers to listen to the content of the duly authorized Democratic program in advance of its broadcast time." You also state that the spirit of the fairness doctrine is equality of access and therefore there should be equality of audience size and composition. You contend that it is unreasonable for WMT to have treated the two programs in "such substantially different ways."

The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of contrasting views in its overall programming, which may include news programs, interviews, discussion, debates, speeches and the like. The purpose of the doctrine is to promote the fullest possible robust debate on public issues. The fairness doctrine does not require precise equality in opportunity such as is required for candidates for public office, but rather that reasonable opportunity be afforded. Moreover, the licensee has considerable discretion in the manner and timing of achieving fairness. The Commission will not substitute its judgment for that of the licensee and will limit its role to determining whether the licensee acted reasonably and in good faith under the circumstances.

In this case you acknowledge that Radio Station WMT did broadcast the Democratic Party reply program on January 21, 1972 at 8:00 p.m. CST. You do not claim that the station failed in its overall programming to present opposing views to the President's State of the Union address; rather you argue that Radio Station WMT failed to meet its obligations under the fairness doctrine because it did not broadcast that reply at a comparable time to the President's address.

The Commission has stated that in making judgments as to what constitutes a reasonable opportunity, a licensee should consider all relevant factors including the amount of time devoted to various views, the frequency of the broadcast and the characteristics of the audience reached. See *King Broadcasting Company*, 10 F.C.C. 2d 970 (1970). While these factors are important in determining whether a reasonable opportunity is afforded, the Commission never has held that the fairness doctrine requires equality of access, audience size and composition as you suggest. In this case, it does not appear that the licensee was unreasonable in determining that it should broadcast the Democratic Party's reply on January 21, 1972 at 8:00 p.m. CST, rather than at 11:00 a.m. CST on the day when CBS Network originated its feed. Further, the licensee stated that it broadcast contrasting views to the President's address on the day of his speech and presented opposing views the next day when it broadcast the Democratic Party's reply. Thus, it appears that the licensee afforded a reasonable opportunity for the expression of views in contrast to those expressed by the President, and therefore met its obligation under the fairness doctrine.

You also state that the licensee should not have listened to the Democratic Party program before determining whether to broadcast it—and that such action is tantamount to censorship. The Commission holds licensees responsible for all programming which they broadcast, except when political candidates appear pursuant to 47 U.S.C. 315. Therefore the licensee is entitled to exercise its discretion in ascertaining the content of the programs it broadcasts.

Regarding your comments on access, the general subject of access to the media is now under consideration by the Commission in its fairness doctrine inquiry. See the enclosed *Notice of Inquiry*, F.C.C. 71-623, released June 11, 1971.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

FOR CHIEF, BROADCAST BUREAU,
WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division.

F.C.C. 72-679

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (CITY OF NANSEMOND, VA.)	Docket No. 19499

REPORT AND ORDER

(Adopted July 26, 1972; Released August 1, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission here considers the Notice of Proposed Rule Making in this proceeding, adopted May 10, 1972 (FCC 72-410; 37 F.R. 10008), which was adopted in response to the petition for reconsideration of Messrs. Lloyd A. Gatling and James F. Hope, Jr. from that portion of the Second Report and Order in Docket No. 18883 denying their petition to assign Channel 221A to Whaleyville, Virginia. See Section 1.106(k)(2) of the Commission's Rules and Regulations.

2. The Notice was adopted on the basis of the incorporation of Whaleyville, Holland, and Nansemond County as the City of Nansemond effective July 1, 1972, with a population of 35,166.[1] The City of Nansemond consists of all of Nansemond County except the independent city of Suffolk (population 9,858). As pointed out in the Notice, FM Station WFOG, Channel 225, and Class IV AM Station WLPM operate at Suffolk.

3. The Notice proposed the assignment of Channel 295, presently assigned to Elizabeth City, North Carolina, as a possible Class B or C channel for Nansemond which could be made with the minimum disruption to the FM Table of Assignments. While the zone boundary passes through the City of Nansemond, it appears that in order for Channel 295 to cover the entire city with minimum principal grade service, the channel will have to be located in Zone II since a facility with 50 kw power and 500 foot height or equivalent is needed for this purpose. Elizabeth City, population 14,069, the seat of Pasquotank County (population 26,824) is allocated Channels 229 and 295. A construction permit for Channel 229 was granted to Love Broadcasting on March 13, 1972. There also are two AM stations at Elizabeth City; Stations WGAI (Class III) and WCNC (Class IV).

4. The only comments filed were by Lloyd A. Gatling (Gatling). Gatling states that Channel 295 is the only FM channel available for assignment to the City of Nansemond, the reallocation of less than 40

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[1] **At the time, a referendum had been held and the consolidation approved. See Title 15.1, Chapter 26, Article 4, Code of Virginia, as amended.**

miles would result in essentially no new preclusion areas, and there would be a more equitable distribution of aural facilities. Gatling also asserts that the rural character of Nansemond raises unique problems which a facility on Channel 295 could solve, e.g., the dissemination of agricultural information including that about vital emergencies. It is asserted that a facility which Gatling and other members of Nansemond community are prepared to apply for and construct could serve as an important news source in the City of Nansemond and serve as a link between Tidewater Community College (in Nansemond) and Paul D. Camp Community College (at Franklin) and the technical-vocational school to be located at Nansemond all in the primary service area.

5. While many of the assertions by Gatling would be more apt in support of an application, the fact is that a community of the size of Nansemond merits an FM channel of its own, and the reallocation of Channel 295 from Elizabeth City, North Carolina, seems to be warranted in the circumstances of making a fair and equitable distribution of facilities as required by Section 307(b) of the Communications Act of 1934, as amended. In this respect, Channel 295 is fallow while the other FM channel at Elizabeth City has only recently been put to use and there also are two AM stations there. Moreover, the area is one where there are not many unused FM assignments.

6. Accordingly, effective September 8, 1972, the FM Table of Assignments (Section 73.202(b)) is amended as concerns the named cities as follows:

City	*Channel number*
City of Nansemond, Va	295
Elizabeth City, N.C.	229

7. Authority for this action is found in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended. IT IS ORDERED that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary.*

F.C.C. 72-577

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of:
AMENDMENT OF SECTIONS 1.540(a), 1.572(b), 1.573(b), 1.578(b), AND 1.580(g) OF THE RULES PERTAINING TO FORMS TO BE USED FOR ASSIGNMENT OF CONSTRUCTION PERMITS AND LICENSES

ORDER

(Adopted June 28, 1972; Released July 3, 1972)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; AND JOHNSON ABSENT.

1. Licensees and permittees of translator stations who wish to assign the licenses or construction permits of such broadcast stations are now required to use FCC Form 314, a 33-page form requiring a great deal of information which is not relevant to translator stations. In an effort to relieve such licensees and permittees of this burden, a new form, designated FCC Form 345, has been designed which will elicit only basic information required to enable a determination to be made as to the legal, financial and other qualifications of proposed assignees of translator stations. The form will consist of six pages. The new form is to be used where only translator stations and related auxiliary stations, such as translator microwave relay stations or UHF translator boosters, are to be assigned, but no other type of station is involved.[1] For example, if the licensee of a television station desires to assign the television station, translator stations and auxiliaries, the Form 314 will be used as in the past, simply listing the translators and auxiliaries along with the primary station. If, however, a licensee desires to assign only translator stations or translators and associated translator microwave relay stations and/or UHF translator boosters, the new FCC Form 345 will be used. We are amending sections 1.540(a), 1.572(b), 1.573(b), and 1.578(b), which are concerned with the use of FCC Form 314, to add to each such rule the use of the new form.[2]

2. In reviewing the various rules which are to be amended for this purpose, it was discovered that, through inadvertence, we failed to amend section 1.578(b) of the rules when, in June 1971, we amended other so-called "15-day" rules. *In the Matter of Amendment of Sections 1.571–1.574 of the Commission's rules pertaining to the process-*

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[1] FCC Form 315 will be used for requesting consent to the transfer of control of the licensee of a translator station.

[2] We are also amending section 1.580(g) of the rules which, while not directly concerned with the use of the new form, is affected by the other rule changes being made.

ing of broadcast applications, 30 FCC 2d 581, 22 RR 2d 1722, (June 30, 1971). In that proceeding, we amended several rules to provide that, within 15 days after acceptance of an application for filing, it can be declared to be a major change; before the amendments, the rules read "after tender for filing." We will take this occasion, therefore, to conform section 1.578(b) with the other rules containing 15-day major change provisos.

3. These amendments to the rules are adopted pursuant to the authority contained in sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended. Since the changes deal with practice or procedure, the notice and effective date provisions of section 553 of the Administrative Procedure Act do not apply (5 USC 553).

4. FCC Form 345 is approved by the Commission at this time, subject to review and approval by the Office of Management and Budget, and is expected to be available for use by applicants on or about October 2, 1972.

5. Accordingly, IT IS ORDERED, THAT, effective July 12, 1972, sections 1.540(a), 1.572(b), 1.573(b) and 1.578(b) and 1.580(g) of the Commission's Rules and Regulations are amended as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1—Practice and Procedure.

1. In § 1.540, paragraph (a) is amended to read as follows:

§ 1.540 Application for voluntary assignment or transfer of control.

(a) Application for consent to the assignment of construction permit or license, or for consent to the transfer of control of a corporation holding such a construction permit or license, shall be filed with the Commission on FCC Form 314 (Assignment of License), FCC Form 315 (Transfer of Control), FCC Form 316 (Short Form), or FCC Form 345 (Assignment of Translator Stations). Such application should be filed with the Commission at least 45 days prior to the contemplated effective date of assignment or transfer of control. FCC Form 345 is to be used only for the assignment of construction permits or licenses of translator stations and associated auxiliaries, such as translator microwave relay stations or UHF translator signal boosters, where no other type of broadcast station is involved. For transfer of control of the licensee of a translator station, FCC Form 315 will be used.

* * * * * * *

2. In § 1.572, paragraph (b) is amended to read as follows:

§ 1.572 Processing of television broadcast applications.

* * * * * * *

(b) If an application is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or so as to result in an assignment or transfer of control which, in the case of an authorized station, would require the filing of an application therefor on FCC Form 314, 315, or 345 (see § 1.540), § 1.580 will apply to such amended application.

* * * * * * *

3. In § 1.573, paragraph (b) is amended to read as follows:

§ 1.573 Processing of FM and noncommercial educational FM broadcast applications.

* * * * * * *

(b) If an application is amended so as to effect a major change as defined in paragraph (a)(1) of this section or so as to result in an assignment or transfer of control which, in the case of an authorized station, would require the filing of an application therefor on FCC Form 314, 315, or 345 (see § 1.540), § 1.580 will apply to such amended application.

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4. In § 1.578, paragraph (b) is amended to read as follows:

§ 1.578 Amendments to applications for renewal, assignment and/or transfer of control.

* * * * * * *

(b) Any amendment to an application for assignment of construction permit or license, or consent to the transfer of control of a corporation holding such a construction permit or license, shall be considered to be a minor amendment, except that any amendment which seeks a change in the ownership interest of the proposed assignee or transferee which would result in a change in control, or any amendment which would require the filing of FCC Forms 314, 315, or 345 (see § 1.540) if the changes sought were made in an original application for assignment or transfer of control, shall be considered to be a major amendment: *Provided, however,* That the Commission may, within 15 days after the acceptance for filing of any other amendment, advise the applicant that the amendment is considered to be a major amendment and therefore is subject to the provisions of § 1.580.

5. In § 1.580, paragraph (g) is amended to read as follows:

§ 1.580 Local notice of the filing of broadcast applications, and timely filing of petitions to deny them.

* * * * * * *

(g) An applicant filing an application or an amendment thereto for a television broadcast translator station, an FM broadcast translator station, or an FM broadcast booster station which is subject to this section shall cause to be published a notice of such filing at least once during the two-week period immediately following the tendering for filing of such application or major amendment, or, when an applicant is specifically advised by the Commission that public notice is required in a particular case pursuant to § 1.572, 1.573, or 1.578, such notice shall be published at least once during the two-week period immediately following Commission notification, in a daily, weekly, or bi-weekly publication having general circulation in the community or area to be served: *Provided, however,* That, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the required notice to the general public, such as posting in the local post office or other public place. The notice shall state:

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F.C.C. 72-665

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
ELI AND HARRY DANIELS, D.B.A. THE HEART OF THE BLACK HILLS STATIONS For Renewal of License of Station KRSD-TV, Rapid City, S. Dak.	Docket No. 18358 File No. BRCT-410
ELI AND HARRY DANIELS, D.B.A. THE HEART OF THE BLACK HILLS STATIONS For Renewal of License of Station KDSJ-TV, Lead, S. Dak.	Docket No. 18359 File No. BRCT-564

MEMORANDUM OPINION AND ORDER

(Adopted July 26, 1972; Released August 1, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONERS REID AND WILEY ABSTAINING FROM VOTING; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has before it for consideration: (a) a petition for reconsideration of our Decision, FCC 71-1102, 32 FCC 2d 196, released November 1, 1971, denying the above-captioned applications, filed December 1, 1971, by Eli and Harry Daniels, d/b/a The Heart of The Black Hills Stations (Black Hills); (b) a petition to reopen and update the record, filed December 1, 1971 by Black Hills; (c) a supplement to petition to reopen and update the record filed December 2, 1971 by Black Hills; (d) an opposition to the petitions for reconsideration and to reopen and update the record, filed December 13, 1971 by Chief, Broadcast Bureau; and (e) a reply to the Broadcast Bureau's opposition, filed January 6, 1972.

2. The history of this proceeding has been adequately detailed in our order designating these applications for hearing, FCC 68-1032, released October 21, 1968, and in Hearing Examiner Donahue's Initial Decision, FCC 70D-28, 32 FCC 2d 201, released July 17, 1970, granting a one year renewal of the licenses of KRSD-TV, Rapid City, and KDSJ-TV, Lead, South Dakota. By Decision, FCC 71-1102, 32 FCC 2d 196, released November 1, 1971, we reversed the Initial Decision and denied renewal of these licenses in light of the licensee's long history of technical rule violations which have had the cumulative effect of depriving the public of the licensed service. Black Hills has now filed petitions for reconsideration of the Decision and to reopen and update the record, which petitions are opposed by the Broadcast Bureau.

3. Black Hills' petitions for reconsideration and to reopen and update the record, urging reconsideration of the Commission's denial of renewal of the licenses of KRSD-TV and KDSJ-TV, rely princi-

pally on the following contentions:[1] (1) the Commission relied upon a mistake of fact concerning continuation of the waiver of the CATV rules[2] in denying the renewal applications; (2) the stations' picture quality has improved; (3) many of the causes of the rule violations were beyond human control; (4) its explanations of the rule violations were disregarded by the Commission; and (5) it lacks sufficient funds to replace inefficient equipment. The opposition filed by the Broadcast Bureau contradicts these arguments and strongly urges denial of both petitions. In the interest of a more comprehensive understanding of the points raised by these pleadings, we will deal with the various contentions made by the licensee, and the Bureau's oppositions thereto, according to the subject matter involved.

Withdrawal of CATV Waiver Request

4. Black Hills claims that the Commission was in error when it stated in the Decision denying renewal of KRSD and KDSJ, that the CATV system's requested waiver of the carriage and non-duplication rules, Section 74.1103 of the Rules, was still in effect.[3] Black Hills argues, however, that the cable system withdrew its waiver request by letter dated July 5, 1968, as part of an agreement between KRSD and Multi-Pix of South Dakota, the then owner of the cable system,[4] and it attaches copies of the letter and agreement to its petitions as "Exhibits 1 and 2."[5] It therefore contends that KRSD's signal has been of "usable quality since late 1968." (Black Hills' Petition for Reconsideration at p. 3).

5. The Broadcast Bureau finds meaningless the licensee's reliance upon the CATV operator's request for withdrawal of the waiver of the carriage and non-duplication rules. First, the condition precedent which the Commission placed on lifting the waiver, i.e., KRSD-TV's providing a picture of "acceptable quality",[6] has not been met. Additionally, the CATV operator's July 5, 1968 letter [7] to the Commission asking withdrawal did not affirmatively advise the Commission that KRSD was providing a picture of acceptable quality. The withdrawal was based solely upon an agreement between Black Hills and the CATV operator.[8] Secondly, the Bureau argues that the above agreement dispels any inference that by 1968, Black Hills was providing a viewable picture because, by its terms, the agreement permits the cable

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[1] Arguments made in the petitions which were previously raised by Black Hills and disposed of by the Commission, will not be dealt with herein.

[2] *Black Hills Video Corporation*, 2 FCC 2d 243 and 465 (1966). In 1966, we granted a waiver of our CATV carriage and non-duplication rules to the Rapid City CATV system because KRSD-TV was providing a signal of such poor quality that it was not usable by the cable system. *Black Hills Video Corporation*, 2 FCC 2d 243 and 465 (1966). In our Decision denying Black Hills' renewal applications, we stated that this waiver was still in effect.

[3] 32 FCC 2d 196, at 198.

[4] The agreement was not implemented until August 25, 1969. This delay in implementation resulted from a provision in the agreement requiring that KRSD receive its network signal from a common carrier, Mountain Microwave Corporation, whose construction permit-renewal applications were not granted by the Commission until August 13, 1969. *Mountain Microwave Corporation*, 18 FCC 2d 1016 (1969).

[5] It should be noted that the aforementioned letter and agreement, attached to Black Hills' Petition as "Exhibits", are not part of the record of the hearing to date, and have not heretofore been offered or relied upon by the licensee.

[6] *Black Hills Video Corp.*, 2 FCC 2d 465 at 466, adopted February 2, 1966.

[7] *Black Hills' Petition for Reconsideration*, Exhibit 1.

[8] *Id.*, Exhibit 2.

operator to duplicate all KRSD–TV network programming except for the distant station's local commercials and station identifications,[9] thereby insuring an alternative and dependable programming service.

6. In reply, Black Hills dismisses the Bureau's opposition, arguing that, because the waiver was granted only on the basis of pleadings, the Commission never made its own determination of KRSD's picture quality.[10] Moreover, it claims that, in 1966, KRSD requested non-duplication protection because of improved picture quality prior to the request for withdrawal of the waiver.[11] However, this request was not acted upon by the Commission.

Picture Quality

7. Black Hills argues that the record does not support the conclusion that it has not provided a picture of usable quality since 1965. In support of its argument (in addition to the CATV waiver argument, *supra*), Black Hills claims that, while a majority of the six public witnesses who testified at the hearing as to picture quality said that the picture had been unsatisfactory prior to the fall of 1968, there had been a marked improvement subsequently. Black Hills also challenges the importance and validity of the 1967 petition signed by 2,000 viewers protesting the picture quality of the stations, which the Commission stressed in its Decision. In contrast, the licensee points to its Petition to Reopen and Update the Record, which includes a compilation of copies of viewers' letters solicited over KRSD–TV and KDSJ–TV,[12] which Black Hills claims attest to the viewability of the stations' signals. In addition, petitioner states that it has a thousand more letters in its files which, it contends, are evidence of its service to the public. Black Hills notes that B. H. Dail, who circulated the 1967 petition, sent KRSD a letter attesting to the improved quality of the service from KRSD and KDSJ. Moreover, it is argued, the FCC Inspector's July 1969 finding that the picture was unsuitable for broadcast should be limited to the short period of time when he was in Rapid City.

8. The Bureau rejects Black Hills' principal claim of factual error (*i.e.*, the Decision's finding that the stations had failed to provide a viewable picture since 1965), and quotes the licensee as saying that "the only time I failed to provide the public with a viewable picture,

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[9] *Id.* Exhibit 2 at p. 2, paragraph 4, which provides as follows:

> "4. KRSD–TV hereby agrees to permit CABLE [Multi-Pix] to receive all of its programs and to receive all duplicating programs as provided by . . . (?) (sic) [copy not legible] from more distant TV broadcast stations during the term of this Agreement, and KRSD–TV hereby waives any rights with which it might be conferred under FCC rules to demand deletion of programming by CABLE."

[10] This argument may not be in keeping with the facts. The Commission's files indicate that the 1966 waiver was granted not only upon the basis of the CATV system's pleading (to which KRSD never responded), but also on the basis of information available to it, disclosing that the KRSD signal "was of such poor quality that it was not usable by the cable system." (See Commission Memoranda Opinions and Orders, of January 5 and February 2, 1966, 2 FCC 2d 243, 244, and 465, 466 respectively.)

[11] The licensee's Reply to Broadcast Bureau's Opposition also has attached to it what is termed "Exhibit 1", which consists apparently of copies of letters from its counsel and Black Hills to the Commission, dated September 6 and 7, 1966, respectively, requesting reimposition of the non-duplication condition by the CATV system. Here, again, as in the situation noted in footnote 5 *supra*, there is no indication that these letters were offered heretofore by the licensee for the record of the hearing herein.

[12] The Petition to Reopen and Update the Record contains the above letters from viewers, as well as an affidavit from Eli Daniels explaining the reasons for the various rule violations.

was during the three year period prior to the designation" order in 1968. (*Broadcast Bureau's Opposition* at p. 6).[13] This amounts to an argument by Black Hills, the Bureau asserts, that it only failed to provide a "viewable" picture for 3 years. No decisional significance is found by the Bureau in the asserted error because, they state, it is irrelevant whether the licensee failed to provide a viewable picture for 3 years instead of 5 years; what is relevant is the failure for an extended period of time.

9. The Bureau points out that the licensee's claim of factual error is premised upon three contentions, each of which the Bureau rejects, to wit: (1) the 1968 withdrawal of the request for waiver of carriage and non-duplication rules; (2) the contention that the record establishes that the public was provided with a viewable picture from late 1968 through the hearing in March 1969; and (3) the claim that the results of the 1969 inspection (*i.e.*, that KRSD was transmitting a picture unsuitable for broadcast) must be limited to the period when the FCC inspector was actually in Rapid City.

10. The Bureau's response to the first argument (withdrawal of waiver request) has already been summarized in para. 5, *supra.* As to the second argument regarding picture quality, the Bureau concedes that the licensee provided the public with a viewable picture from late 1968 through March 1969;[14] however, it does not regard this as proof that such improved service has continued, which it asserts is the real factor of decisional significance. What the Bureau claims to be really significant is the fact that, despite the Examiner's statement during the hearing on April 17, 1969, that he "was disposed to deal lightly with the licensee" if the remaining problems were cleaned up within 90 days, the service again reverted to its previous "unsuitable for broadcast" level within that same 90 days after the staff concluded the hearings in Rapid City in mid-March 1969. The latter situation was established by the results of the July 30, 1969, inspection. From this, the Bureau concludes that apparently only the physical presence of the Commission's staff in Rapid City can insure that the licensee will operate its stations satisfactorily and in compliance with Commission Rules. As to the third argument, the Bureau states that Black Hills misconstrues its burden when it claims that the proof regarding picture quality must be limited to that period in 1969 during which the FCC inspector was in Rapid City. It points out that the same lack of video components, which the licensee admits made its picture unsuitable for broadcast, was present during the inspections of 1961, 1966, 1967, 1969 and 1971; that the only proof offered by the licensee that these deficiencies were due to causes other than broadcast equipment

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[13] Black Hills charges that the Bureau distorted the record and the licensee's contentions in "manufacturing" the quotation to the effect that only during the three year period prior to designation did it fail to provide a viewable picture (*Reply to Broadcast Bureau's Opposition to Petitions for Reconsideration and to Reopen and Update the Record* at p. 2 quoting from the *Broadcast Bureau's Opposition* at p. 6). Black Hills denied making such a statement or that such a statement could be inferred from the record. It claims that the Bureau devised the word "unviewable", which never was used by the licensee. While Black Hills admits that some public witnesses characterized its picture as "unsatisfactory" or "unreliable", it argues that such terms are not equivalent to "unviewable".

[14] It should be noted that this period coincides with and spans the months from the designation for hearing (October 21, 1968) through the Rapid City phase of the hearing (March 10–13, 1969).

were statements on those occasions by the licensee's principal to that effect; and that the record establishes that such excuses had no basis in fact. The Bureau therefore submits that Black Hills has failed to show a basis in this regard for reversal of the Commission's Decision.

11. Turning to the viewers' letters submitted by Black Hills in support of its claims regarding picture quality, the Bureau argues that they should be accorded little, if any, weight in part because of the almost "deceptive" [15] broadcast announcements in the solicitation of the letters by the licensee over KRSD and KDSJ. These broadcast statements implied that the denial of the renewal applications would *permanently* deprive viewers of CBS programming and a second program source, whatever its quality. The solicitation is characterized by the Bureau as "deceptive" because it failed to state that the Commission has consistently taken all possible steps in other similar cases to insure uninterrupted or promptly re-established service. According to the Bureau, fear of a lost program source was the primary motivation behind the letters and, therefore, greater weight should be accorded the reason the letters were written, rather than the reasons advanced in the letters for renewal of these licenses. The Bureau contends further that even if the letters were to be considered as indicating improved service since 1969, they could not affect this Decision because here the central question is whether this licensee can be "relied upon to maintain this service in the future." (*Bureau's Opposition* at p. 17). The Bureau answers this question in the negative and points out that many of the letters confirm unsatisfactory service prior to the designation order.

Rule Violations Caused by Factors Beyond Human Control

12. Black Hills argues that the Commission's reliance on *Brooklyn Broadcasting Corporation*, 4 FCC 521 (1937), as authority for denying renewal, is misplaced. That case, Black Hills argues, involved equipment failures "due to causes reasonably within human control, whereby the public is deprived of service, . . ." and is not applicable to the instant case, because here "in many instances the violations were due to causes not within human control." (*Black Hills Petition for Reconsideration* at p. 4). In support of this argument, Black Hills asserts: (1) that the 1967 tornado all but demolished its antenna tower, (2) that "network service has been poor",[16] (3) that KRSD's Dumont transmitter, "though type-approved at the time, is not much good" (*Id.*), (4) that the picture at the last inspection was impaired because of water that entered the transmission line through a crack, and (5) that VHF TV signals are subject to fading during the summer months and that Black Hills has had most trouble with its signal from the common carrier from June through August, during which time the stations were inspected.[17]

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[15] *Broadcast Bureau's Opposition* at p. 17.

[16] In his affidavit, attached to Black Hills' Petition to Reopen and Update the Record, Eli Daniels states that he anticipated, at the time of the hearing, receiving "a superior picture once service from the common carrier," Mountain Microwave, commenced. However, he states that Black Hills has had picture problems with this service. (Affidavit at p. 2).

[17] It should be noted, contrariwise, that the stations were in fact inspected in September 1966, October 1967, July 1969 and May 1971.

13. The Bureau's opposition takes issue with Black Hills' treatment of the technical violations attributed to its two television stations and its attempt to distinguish *Brooklyn Broadcasting Corporation, supra*, from the instant case. The Bureau argues that even if some of the violations were the result of causes beyond human control, Black Hills has failed to rebut its "long history of failing to promptly reestablish the service when problems did occur." (*Bureau's Opposition* at p. 10). In particular, the Bureau notes that, for 8 years, the licensee failed to correct transmission line support defects which permitted the line to sway. Yet during this period, the Bureau states, the licensee was not able to achieve and to maintain authorized power because it claimed that wind damage to the transmission line made it impossible to achieve full power. Likewise, the Bureau's opposition points to a number of instances in the record, going back several years, where known deficiencies were called to the licensee's attention and the latest inspections showed they had not been corrected, despite the licensee's promises to do so. Referring to the 1967 tornado which severely damaged KRSD's antenna and tower causing a multi-image picture, the Bureau notes that, in spite of this serious damage, Black Hills did not file an application for a new antenna to replace the damaged one until 7 months had passed. With this background, the Bureau submits that the consequences of the wind damage were not beyond human control. In response to the contention that VHF signals are subject to summertime fading from June through August, the Bureau notes that only one of the last four inspections occurred in these months[18] and, therefore, it rejects this explanation of Black Hill's deficient picture quality as found during the inspections. In reply, Black Hills seeks to clarify the VHF summertime fading argument by explaining that "summer", for the purposes of VHF–TV signal fading, includes the months of May through September. Thus, the licensee concludes that three of the four inspections were conducted during "summer" months and that this, in part, accounts for its less than satisfactory picture quality. The seven months' delay in filing the antenna application is defended by the licensee on two grounds: first, that antenna problems are not quickly diagnosable, especially absent a standby antenna; and, second, that preparation of an antenna application is both complicated and time consuming.

Lack of Funds

14. Black Hills refers to its application for a new antenna system, filed in January 1968, to replace the one damaged by the 1967 tornado.[19] It argues that without a grant of the new antenna system, it has been unable to expand its net weekly circulation by increasing its "set count", and that, had it been permitted to do so, CBS would have increased its "network rate" from $100 to $250 "with this increase (sic) set count" (Affidavit of Eli Daniels, at p. 2, contained in Black Hills' Petition to Reopen and Update Record). Because this antici-

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[18] *Id.*

[19] Black Hills also referred to the antenna application at the October 7, 1971, oral argument in this proceeding. (Tr. pp. 669–74). The application has not been granted in accordance with the Commission's policy of not acting on major facility changes during a renewal hearing. The licensee is currently operating with a new antenna under special temporary authority.

pated increase in revenues has not occurred, KRSD claims that it has been unable to replace its inefficient Dumont transmitter and make the promised improvements in facilities.

15. The Bureau rejects Black Hills' argument that Commission failure to grant its new antenna application was the reason for its failure to make the improvements promised in 1969, and it disputes the validity of the figures used by Black Hills regarding circulation and "set count". Finally, the Bureau concludes that this is the "first time" that the licensee has raised this lack of funds issue, as well as the contention that the promised improvements were conditioned upon a substantial increase in revenues. The Bureau asserts that Commission precedent precludes Black Hills from relying on these facts not previously revealed.[20]

Black Hills' Complaint Regarding the Nature of the Commission's Decision

16. Black Hills argues that the Commission "relied heavily on the Broadcast Bureau in drafting its decision" denying renewal, and that, therefore, the "decision has completely disregarded the licensee's explanations and has weighed the evidence unjustifiably against it." (*Black Hills Petition for Reconsideration* at pp. 1–2).

17. The Bureau rejects Black Hills' allegations as unsupported by fact, and labels the argument an "irresponsible" charge that is possibly "unconscionable". (*Broadcast Bureau's Opposition* pp. 2–3, citing as authority Oral Argument in *Vinita Broadcasting Company, Inc.*, Docket No. 18085, Tr. 685–86). Also rejected is Black Hills' contention that its own explanations were "completely disregarded" by the Commission in drafting the Decision. The Bureau notes that the Commission did consider these explanations in paragraphs 5 and 6 of the Decision, but found that they were insufficient to warrant renewal of the licenses, and often short on factual support. Moreover, the Bureau views the central issue of this case to be "whether, based on the licensee's past record of performance, the Commission can rely on the applicant in the future to operate its stations in compliance with the Rules and provide the public with the technical service its license requires." (*Bureau's Opposition* at p. 5). Black Hills' petition and claims of error are characterized by the Bureau as picking at bits and pieces of the Decision, none of which would affect the Decision's ultimate conclusion denying renewal.

18. Black Hills responds to the Bureau's allegation of improper advocacy, noting that it never stated that the Commission improperly relied upon the Bureau in rendering the Decision. However, it contends that it is clear that the Commission "utilized the Broadcast Bureau's language", because the Decision contains many lengthy quotes and paraphrases from Bureau pleadings, some of which incorporated incorrect facts which were, in turn, adopted by the Commission.

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[20] Citing *Central Coast Television*, 3 FCC 2d 524 (1966). See footnote 23, *infra*, for pertinent language of the Commission's holding.

Discussion

19. It does not appear that any lengthy analysis is required in the circumstances of this case. In our opinion, the brief and inadequate petition for reconsideration filed by the licensee has been wholly rebutted by the Broadcast Bureau's Opposition, and it is manifest that Black Hills has not made out a case for reversal of the Commission's Decision denying renewal. Moreover, it would appear that both the petition for reconsideration and the "Petition to Reopen and Update Record" are procedurally defective, since they do not comply with the requirements of Section 1.106 of the Regulations.[21] Each of these pleadings relies on so-called "Exhibits" (attached to the Petition) which were not heretofore offered as part of the record herein, although they were in the licensee's possession and knowledge, and each contains materials which the licensee has failed to show involves new and changed circumstances, previously unknown to him and which could not have been ascertained through the exercise of ordinary diligence. See *Central Coast Television*, 3 FCC 2d 524, 525 (1966). In any event, and despite the procedural deficiencies, an analysis of the content of the arguments and assertions made by the licensee will, as shown below, demonstrate that they are without merit and do not warrant a reconsideration and reversal of the Commission's action herein.

20. It must be emphasized that the Commission's approach in considering an application for renewal of license, though judged on the past conduct of the licensee, nevertheless requires an affirmative finding that the licensee's operation of the station *in the future* will serve the public interest, convenience and necessity. In this regard, we agree with the Bureau that, even when all of the licensee's "excuses" for his past delinquencies are taken into account, the central issue for determination remains—*i.e.*, can the Commission rely on Black Hills to operate its television station in the future in accordance with the rules and to render a satisfactory service to the community? In our view, the record in this proceeding speaks overwhelmingly against any such assurance on any reasonable grounds, even when the licensee is given every benefit of doubt with respect to those instances which indicate that the public in Rapid City has been deprived of a viable second service in the community. As far as the *record* of the proceeding is concerned, there is no factual basis for Black Hills' assertion that it is now rendering a viable service and that it is able and qualified to do so in the future.

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[21] Section 1.106(c) of the Rules governing Petitions for Reconsideration of final action provides as follows:

> (c) A petition for reconsideration which relies on facts which have not previously been presented to the Commission or to the designated authority, as the case may be, will be granted only under the following circumstances:
>
> (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters;
>
> (2) The facts relied on were unknown to petitioner until after his last opportunity to present such matters, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or
>
> (3) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.

See footnotes 5 and 11, *supra*.

21. Turning to the basic points argued by the licensee in his petitions, it appears that two main arguments are being made:

> (1) The Commission was mistaken in fact when it rested its Decision on the basis that KRSD was not affording the public with a usable signal and thus was depriving the community of the licensed service; and (2) the technical violations attributed to the licensee which degraded its service were not due to the licensee's faults.

However, as an initial complaint, the licensee claims that the Commission disregarded its explanations of the rule violations and relied too "heavily on the Broadcast Bureau in drafting its decision". There is no foundation for such a claim; the Decision did, in fact consider these explanations and alleged "extenuating circumstances", but concluded properly that they did not justify the conduct found to exist, and were insufficient to rebut the conclusion that the licensee's "operation of stations KRSD-TV and KDSJ-TV was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies shown by this uncontroverted record" (32 FCC 2d at p. 198). Neither the petition for reconsideration nor the petition to reopen and update the record offer new material which would require changing this conclusion.

Picture Quality and Withdrawal of CATV Waiver Request

22. As indicated above, Black Hills' principal claim is that the Decision contains the factual error that the stations had not provided a picture of usable quality since at least 1965. This claim is based upon three allegations: (1) the 1968 request by the then owner of the CATV system for withdrawal of the waiver of the carriage and nonduplication rules (Section 74.1103); (2) a viewable picture was provided from late 1968 through the hearings in March 1969; and (3) the FCC inspector's 1969 finding that the picture transmitted was unsuitable for broadcast must be limited to the time that the inspector actually was in Rapid City.

23. Black Hills argues that it has provided a signal of usable quality since late 1968 when it was granted temporary authority to operate with a new antenna system. This conclusion is buttressed, in Black Hills' view, by the fact that the request for waiver of the CATV rules was withdrawn by the CATV operator by a letter to the Commission dated July 5, 1968.[22] By way of background, the Commission granted a waiver of the carriage and non-duplication rules in January 1966 because it appeared that KRSD-TV's signal was not usable by the cable system (2 FCC 2d 243, 244 (1966)). The waiver was premised upon a letter dated January 3, 1966, from Black Hills Video Corporation, the then operator of the CATV system, which alleged that it had attempted to carry KRSD on December 31, 1965, but that the signal was "of [a] totally unusable quality," as well as upon certain preliminary

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[22] This is the letter referred to in footnote 5 and in paragraph 19, *supra*, as not being a part of the record and not being in compliance with Section 1.106(c).

investigational reports by the Commission's field staff. The system had received numerous subscriber complaints requesting either restoration of the previously carried NBC Denver signal or cancellation of their service (2 FCC 2d at p. 244). The Commission granted immediate relief from the rules on January 5, 1966, but authorized Black Hills to answer the cable system's allegations. Black Hills, however, did not respond to the allegations, and the Commission stayed the carriage and non-duplication rules on February 2, 1966 (2 FCC 2d 465).

24. The Memorandum Opinion and Order staying the rules, *supra*, contained the condition precedent that "[u]ntil such time as it appears that KRSD–TV is providing a signal of acceptable quality," the order staying the rules would remain in effect. We must reject Black Hills' contention that the 1968 private agreement between it and the cable operator for carriage of KRSD's signal on the cable system constitutes proof of the satisfactory quality of its signal. The cable operator's agreement to withdraw its waiver request (which, in itself, was not implemented until August 1969 (see footnote 4, *supra*)), does not satisfy the above condition precedent and does not undermine the validity of the Commission's reliance upon *Black Hills Video Corporation*, *supra*. That there are other reasons, aside from improved signal quality, which may have motivated this agreement may be inferred from a closer examination of the text of the contract. The opening "whereas" clauses (to which petitioner did not refer) indicate that one of the reasons for the agreement was that "KRSD–TV desires to utilize one (1) channel of common carrier microwave service over the routes now used by Mountain Microwave to serve CABLE at low rates made possible by multi-channel services being rendered to CABLE." Thus, the withdrawal of the waiver based upon the private agreement, between the parties does not necessarily establish, as Black Hills submits, that it has provided a picture of usable quality since 1968. We note further that Paragraph 4 of the agreement (quoted in footnote 9, *supra*) permits the CATV operator to duplicate all of Black Hills' network programming except for the distant station's local commercials and identifications. The effect of this paragraph was to insure the cable system of a usable network signal from a distant station if KRSD was not providing a usable picture.

25. Moreover, we are of the opinion that Black Hills' failure to reply to the January 3, 1966, letter, *supra*, permits a reasonable inference to be drawn that its picture *was* unusable from 1965 on. This view is reinforced by Black Hills' own petition for reconsideration which states that "KRSD's signal has been of a usable quality since late 1968 after the station received temporary authority to operate with a new antenna system" (*Black Hills' Petition for Reconsideration* at p. 3). This statement is tantamount to an admission that KRSD was not providing a usable picture from at least 1965 through "late 1968." If Black Hills did in fact provide improved service from late 1968 through the hearing in March 1969, this does not necessarily establish that improved service has continued since that time or that it will continue in the future. Indeed, we believe that the record shows that the

picture quality declined after March 1969. After the close of the hearing, when Black Hills had knowledge of the deficiencies and time to correct them, and was urged by the Examiner to do so, a July 1969 inspection established that KRSD and KDSJ were "*still* in substantial violation of the *same* rules that the 1966 and 1967 inspections found . . . ." (32 FCC 2d at p. 199). It must therefore be concluded that Black Hills has failed to make an adequate showing, by these arguments regarding the purported withdrawal of the waiver request, that the Commission was in error regarding its conclusion on Black Hills' quality of service.

26. The remaining portion of the licensee's argument regarding quality of service is founded on its Petition to Reopen and Update the Record, by including therein over one hundred letters and multi-signature petitions (copies attached to its Petition) which it solicited by broadcast announcements to viewers in its area, in an effort to have the Commission reconsider the denials of renewals. KRSD claims that these solicited letters, "plus over one thousand more on file at KRSD–TV are evidence that the stations are providing service to the public, and that any finding to the contrary is without basis in fact." As has been indicated above, as far as the record in the proceeding compiled thus far is concerned, there is no credible evidence that the licensee has been affording the public in Rapid City with a usable signal of required quality. However, Black Hills now offers the letters and petitions it has solicited as proof that it provides a satisfactory signal to its viewers. In this connection, the licensee was apparently aware of the threshold showing it must make, in terms of Section 1.106, quoted above, before the Commission will accept this "11th Hour 'evidence' ". It therefore alleges in its petition to reopen that:

> Although most of the material being presented at this time might have been offered earlier, there is good cause for the Commission to accept the petition and reopen the record at this time. In its Decision, the Commission noted the uniqueness of this case in that ordinarily, technical violations, standing alone, would not form a basis for denial of renewal of license. The Commission should have the benefit of a recent sampling of opinion from the areas most greatly affected, as well as clarification of matters discussed in its Decision. The licensee never attempted to solicit letters or petitions heretofore, since at the hearing it was believed that the petitions were brought into proper perspective by testimony of public witnesses. Moreover, the Examiner, in his Initial Decision, did not place much weight upon these petitions. He noted in Paragraph 26 in his Decision that Eli Daniels and Dail were involved in litigation together, as well as other factors which tended to diminish the weight attached to these petitions. (Petition to Reopen, para. 4).

27. The foregoing hardly suffices to satisfy the conditions precedent to a reopening of record, set forth in Section 1.106 (see footnote 21, *supra*). Moreover, there does not appear to be any valid basis for petitioner's apparent argument in this regard that these proffered ma-

terials (including Eli Daniels' affidavit) are necessary "to round out the record in this case which is presently lacking in certain details and make it subject to conjecture and speculation" and that the materials will serve ". . . as clarification of matters discussed in its Decision." Presumably these "matters" are "the 1967 petition signed by 2000 viewers concerning the quality of the picture being offered by the licensee . . ." which . . . "led to the finding that the licensee has not been providing Rapid City and Lead with a picture of usable quality for a number of years. . . ." (Petition p. 1, 2, 3). We must point out, however, that the question of quality of service, which was, in part, the basis of the Decision herein, involved the same issues of which the licensee had notice at the time of designation for hearing; and that he has not made *any* showing, let alone a sufficient showing, as required by the Rules, that he could not have produced such evidence as the viewers' petitions and letters at the time of the hearing. Our rules and long held Commission precedent do not permit the petitioner, at this late date, to make a case which he had failed to make at the time of the original hearing.[23]

28. Despite our conclusion to deny Black Hills' Petition to Reopen and Update the Record, we have nevertheless, in our discretion, examined the proffered materials in the desire to afford the licensee every consideration in the circumstances and to determine whether public interest factors require that we take account of the above-described letters and petitions.[24] However, upon examination of the text of the letters, in the light of the nature and content of the broadcast solicitations, it becomes crystal clear that the writers in the area were primarily concerned about losing a second source of programming, as well they might. We need not question the "bona fides" of the letters and petitions [25]; taking them at their face value will indicate that the letters themselves are proof not so much of the quality of the signal (which petitioner asserts), as they are of the demand of the viewers for continuance of the CBS programming and the existence of two competitive stations in the community for a choice of programming.[26] Since there never was any intention by the Com-

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[23] See *WWIZ, Inc.*, 4 FCC 2d 608 (1966), in which the Commission stated:

> The end of the judicial process cannot be regarded simply as a signal to begin anew with pleas to the agency. Only a strong and compelling case would warrant taking up the matter again after the agency and judicial process has been completed. No such showing has been made here.

Semble, *La Fiesta Broadcasting* 2 FCC 2d 255 (1965) and cases cited therein; and *Central Coast Television* (KCOY–TV) 3 FCC 2d 524 (1966) in which the Commission likewise held that:

> Under Section 1.106(c) of the rules, a petitioner who predicates a request for reconsideration of an order on facts not previously submitted to the Commission must establish either that such facts relate to new or changed circumstances or that they were previously unknown to petitioner and could not have been ascertained through the exercise of ordinary diligence. . . . Now that the Commission's determination has been adverse to Kay, it proposes to try a different approach and to rely on a new [engineering] showing. . . . (3 FCC 2d 525).

[24] A similar procedure was followed in *Central Coast Television, supra*.

[25] It might be noted that some of the letters (see e.g. exhibits A 87, 108, 110, etc.) refer to, and are apparently in response to an article published in the Rapid City Journal of November 2, 1971 (a day after release of the Commission's Decision). It would appear from the contents of these letters that the newspaper article is a report of Mr. Daniel's views of the Commission's Decision; however, no copy of this article was submitted by the licensee in the voluminous materials attached to the petition.

[26] It does not even seem necessary, in the circumstances, to determine whether, in soliciting its viewers to write to the Commission regarding the merits of its Decision, the licensee was in violation of Section 1.1225(a) of the Rules regarding prohibited *ex parte* presentations.

mission of deleting the allocation of Channel 7 from Rapid City in this proceeding, and if it had been made clear to the public that the real reason for the Commission's denial of renewal was because of Black Hills' neglect over the years of its obligation to the community, we are convinced that the reaction by the citizens would have been quite different.

29. In any event, these letters and petitions could only be given very minimal weight, since they are not directed primarily to the crucial questions in this proceeding, namely, the quality of the licensee's signal and the assurance that he can be relied upon in the future to observe his responsibilities as a licensee. Accordingly, we hold that the proffered letters and petitions cannot justify the grant of a renewal to a licensee who has failed to uphold his obligation to operate in the public interest.

Technical Violations

30. As summarized above, the second of the licensee's main contentions is that the technical violations were not attributable to the licensee's fault. Black Hills recites previously stated excuses for its inadequate technical service and argues that the Commission's reliance on *Brooklyn Broadcasting Corporation*, 4 FCC 521 (1937), is misplaced because here, the causes of equipment failure were beyond reasonable human control. As examples of factors not "reasonably within human control", Black Hills refers to the 1967 tornado which severely damaged its antenna tower, the fact that its source of network programming has been poor, and the KRSD–TV's Dumont transmitter "is not much good."[27] We believe, however, that these excuses, even if true, do not overcome the licensee's long history of failing promptly to re-establish service or correct problems after they arose. For example, seven months elapsed between the date of the 1967 tornado damage and the time Black Hills filed for a new antenna system. Two inadequate excuses are offered for the 7 month delay; (1) antenna problems are difficult to diagnose, especially absent a standby antenna, and (2) the preparation of an antenna application is complicated and time consuming. However, neither of these explanations adequately explains the delay. Nor has Black Hills shown that the technical deficiencies which caused the poor picture quality found during the 1961, 1966, 1967 and 1969 inspections were not due to causes which a reasonably prudent and efficient broadcaster would have had the capacity to correct. Moreover, it took three inspections and three years before Black Hills corrected the spurious emissions from the KDSJ–TV transmitter, which, as the Commission's Decision indicated, constituted a potential hazard to aviation control frequencies, and this was in the vicinity of Ellsworth Air Force Base. Therefore, it must be concluded here also that the licensee has failed to justify reconsideration of our Decision.

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[27] The transmitter is no longer type-approved, but its use has been "grandfathered" by the Commission. 32 FCC 2d at p. 217.

Lack of Funds

31. Another argument has been advanced by Black Hills, at this late stage of the proceeding, by its assertion that were it not for the Commission's failure to grant its new antenna application, it could have upgraded its facilities to improve its service; and that, absent a grant, it is financially unable to make necessary corrections, including replacement of KRSD's antiquated Dumont transmitter. This argument compels a conclusion that Black Hills is not financially qualified to remain a licensee. Financial qualification spans the entire term of a license, and must be shown specifically at renewal time. The Commission cannot accept the extra-record allegations made at oral argument,[28] and again in the licensee's instant pleadings, that a grant of the new antenna application will increase Black Hills' network compensation and increase its advertising revenues, at least to the extent of enabling it, as it claims, to make necessary repairs and replacements. Black Hills claims in this regard, therefore, must be regarded as merely speculative.[29] As the Bureau has argued, for the licensee to improve its financial status, it must improve its service so that more potential viewers will watch the stations. The record establishes that Black Hills has failed to do this and cannot be relied upon in the future to carry out its obligations and responsibilities as a licensee.

32. For all of the foregoing reasons, we conclude that the Black Hills petition for reconsideration and its petition to Reopen and Update the Record must be denied.

33. Accordingly, IT IS ORDERED, That the Petition for Reconsideration, filed by The Heart of the Black Hills Stations, of our Decision released November 1, 1971, FCC 71-1102, denying renewal of licenses of television broadcast stations KRSD-TV, Rapid City and KDSJ-TV, Lead, South Dakota, IS DENIED;

34. IT IS FURTHER ORDERED, That the Petition to Reopen and Update the Record herein filed by the above-mentioned licensee IS DENIED;

35. IT IS FURTHER ORDERED, That in order to enable The Heart of the Black Hills Stations to wind up its affairs IT IS AUTHORIZED to operate stations KRSD-TV and KDSJ-TV until 12:01 a.m., October 1, 1972; PROVIDED, however, that if The Heart of the Black Hills Stations seeks judicial review herein, it is authorized to continue to operate stations KRSD-TV and KDSJ-TV until thirty (30) days after the final disposition of such appeal.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[28] At oral argument, Black Hills' counsel stated that "[m]any of their problems are caused by equipment that is less than first-rate, but which just cannot be replaced on account of insufficient capital." *Transcript of Oral Argument* at p. 664.

[29] *Id.* at pp. 671-72.

F.C.C. 72-633

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of HEPBURN BROADCASTING CO., INC., RADIO STATION KOKA, FORT WORTH, TEX. For renewal of license	BR-1774

JULY 19, 1972.

HEPBURN BROADCASTING CO., INC.,
Radio Station KOKA,
P.O. Box 7116,
Fort Worth, Tex. 76111

GENTLEMEN: This refers to your application for renewal of license of Station KOKA, Shreveport, Louisiana (File No. BR-1774).

By letter of March 3, 1971, your prior renewal application was granted for a period of one year, rather than for the full three-year term (28 F.C.C. 2d 41). In our letter we recited your failure to exercise proper employee controls, which resulted in the broadcast by station disc jockeys of ad lib and scheduled announcements for promotions in which KOKA employees were financially interested. We also considered your failure to log many of these announcements, as well as your failure to log as commercial matter the conjunctive playing of records by artists who were featured in the shows in question. Finally, our letter cited the broadcast by Station KOKA of lottery information, in apparent violation of 18 U.S.C. 1304. The matters in question all had occurred in 1968 and 1969.

As stated in our letter, it appeared that you had implemented adequate controls to prevent a recurrence of the subject violations; and we set forth our expectation that you would maintain those controls. You were advised that your performance during the license period would be carefully examined to determine whether the public interest would be served by further renewal of your license.

Our review of your application for renewal of license, as well as your performance during the license period, persuades us that a grant of your application would serve the public interest, convenience and necessity. Accordingly, your renewal application is hereby granted for the remainder of the full license term expiring June 1, 1973.

Commissioner Hooks not participating.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-688

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF CABLE TELEVISION SYSTEM PURSUANT TO SECTION 76.501(a)(2) OF THE COMMISSION'S RULES, BY KING VIDEOCABLE CO.
Re Cable Television System at Seattle, Wash.
File No. CTAX-3

MEMORANDUM OPINION AND ORDER

(Adopted July 26, 1972; Released August 1, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. In the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 74.1131 (now Section 76.501) of the Commission's Rules which, inter alia, prohibits cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order, we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Cablevision Corp.*, (33 FCC 2d 293) we granted the first two tax certificate applications filed pursuant to our new cable television cross-ownership rules.

2. Now before us is an application for a Section 1071 tax certificate, filed by King Videocable on April 7, 1972, with respect to its sale, on March 29, 1972, of its 24 percent interest in United Community Antenna System, Inc. ("UCAS"), to Viacom International, Inc. King Videocable states: (1) that it is a wholly owned subsidiary of King Broadcasting Company, licensee of Station KING-TV, Seattle, Wash-

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[1] Section 76.501 of the Rules provides, in pertinent part, that: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers) . . . NOTE 2: The word 'interest' as used herein includes, in the case of corporations, common officers or directors and partial (as well as total) ownership interests represented by ownership of voting stock."

[2] Section 1071 of the Internal Revenue Code provides that: "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elected, be treated as an involuntary conversion of such property within the meaning of Section 1033."

ington; (2) that at the time of sale UCAS operated cable systems in Seattle and (through Vista TV Cable, Inc., a wholly owned subsidiary of UCAS) in Bothell, Washington, both within the predicted Grade B contour of Station KING-TV; and (3) that King Videocable acquired its interest in UCAS prior to the Commission's adoption of Section 76.501 (originally designated as Section 74.1131) of the Rules, and sold that interest in compliance with the requirements of that section.

3. The impact of Section 76.501 is that if a cable television system which has a cross-interest relationship with a local television broadcast station proposes to carry the signal of *any* television broadcast station (i.e., perform a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either system or the station, in compliance with the requirements of new Section 76.501, is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television broadcast stations and cable television systems.

4. It is clear, in view of the foregoing, that the sale of King Videocable of its interest in the Seattle and Bothell, Washington, cable television systems directly or indirectly owned and controlled by United Community Antenna System, Inc., was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of the Rules, with respect to the ownership and control of television stations and cable television systems.

ACCORDINGLY, IT IS ORDERED, That there BE ISSUED to King Videocable Company the tax certificate appended hereto, certifying that its sale of its interest in the cable television systems at Seattle and Bothell, Washington, directly or indirectly owned and controlled by United Community Antenna System, Inc., was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of the Rules, with respect to the ownership and control of television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

King Videocable Company, a wholly owned subsidiary of the licensee of Station KING-TV, Seattle, Washington (King Broadcasting Company), has reported to the Commission its sale, on March 29, 1972, of its interest in cable television systems in Seattle and Bothell, Washington, operated respectively by United Community Antenna System, Inc. ("UCAS"), and by Vista TV Cable, Inc. (a wholly owned subsidiary of UCAS), to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the sale was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 26th day of July, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-642

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
KOLOB BROADCASTING CO., CARLSBAD, N. MEX.
Concerning Conduct of a Contest by Station KCCC, Carlsbad, N. Mex.
BR-4552

JULY 19, 1972.

KOLOB BROADCASTING CO.,
Radio Station KCCC,
1206 West Mermod Street,
Carlsbad, N. Mex. 88220

GENTLEMEN: An inquiry into the operation of Station KCCC discloses that on the third Saturday of August, September and October, 1971, you broadcast a "Treasure Chest" contest for the promotion of the "100 Block Shopping Center." Prior to the September and October contests, you broadcast announcements that up to $2,000 could be won by a participant in the September contest, and up to $1,900 in the October contest. In order to win the grand prize, a contestant would have to select an envelope awarding all the prizes contained in the chest. The chest was kept at the station before and after the October contest. Mr. Donald Runyon, engineer in charge of the station, possessed the extra key to the chest. He stated that the chest had not been opened since the October contest. The envelope awarding all prizes in the chest had not been selected by a participant in the previous contests. When the contents of the chest were inventoried by the Commission's staff after the October contest, no such envelope was found. In addition, since only approximately $100 had been awarded in the September and October contests, the value of the remaining prizes should have totaled about $1,900. In fact, the remaining prizes were found to have a total value of only $1,381. Thus, it would not have been possible to win the advertised grand prize if the "win-all-prizes" envelope had been chosen by a contestant. In fact, the largest prize found in the chest was $200.

By letter dated June 14, 1972, the Commission requested more information concerning this matter. Your response states the following: The station's studios consist of two rooms inside a furniture store owned by the licensee's largest shareholder and President, Marion Jenkins. Several hundred people come into the store every month. The chest was large (2 feet by 2 feet by 1½ feet) and had gold letters on the outside stating, "KCCC Treasure Chest." Anyone entering the studio could see and have access to the chest. The chest could also be seen through the studio windows from the store. A cardboard box containing 200 keys was kept next to the chest. It is possible that more than one key of the 200 could open the lock. There have always been six or seven people with keys to the studio, and several ex-employees could have had keys duplicated for themselves while working at KCCC. After the September contest but before the October contest Runyon found the building open one night when it should not have been. Your response also relates other incidents where the station's files had been gone through, copies of logs were found missing, and the station's license removed from its proper place. No inventories of the chest were taken in the weeks preceding the October contest.

The Commission requires that licensees that conduct contests adequately supervise and control the contests to assure that they are conducted fairly and are substantially as represented in announcements to the public. The lack of supervision and control of the October Treasure Chest contest is apparent from your own statements. The chest was clearly marked and could be seen by anyone entering the studio or by anyone looking into the studio from the furniture store. Numerous people apparently had access to the chest and, by virtue of the one or more keys in a cardboard box immediately adjacent to the chest, to its contents. You were aware of unauthorized entries into the studio, and that the furniture store had been found open when it should not have been in the weeks preceding the October contest. Nonetheless, you conducted no inventory of the chest in preparation for the October contest. Therefore, you had no certain knowledge, when you advertised the contest, that the grand prize advertised for the October contest could be won. The Commission is of the view that your lack of control and supervision of the contest fell short of the required degree of licensee responsibility. Therefore, the Commission has been unable to determine that the renewal of the license for Station KCCC for a full three-year term would serve the public interest, convenience and necessity. In order to provide an earlier opportunity for review of the operation of the station, it is, therefore, granting the application (BR-4552) for renewal of license of Station KCCC, Carlsbad, New Mexico, for a term ending August 1, 1973.

Commissioner Wiley concurring in the result; Commissioner Hooks not participating.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-668

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20054

In the Matter of AMENDMENT OF PARTS 21, 89, 91, AND 93 OF THE RULES TO REFLECT THE AVAILABILITY OF LAND MOBILE CHANNELS IN THE 470–512 MHz BAND IN THE 10 LARGEST URBANIZED AREAS OF THE UNITED STATES	Docket No. 18261

THIRD REPORT AND ORDER

(Adopted July 26, 1972; Released August 1, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. On January 7, 1972, the Commission released a Second Further Notice of Proposed Rule Making (FCC 72-7) in the above-captioned matter proposing the application of power/height curves which would permit the operation of land mobile radio base stations in the 470–512 MHz band with antenna heights above average terrain greater than 500 feet. The Notice was duly published in the Federal Register on January 15, 1972, (37 FR 676). Comments were requested by February 23, 1972, and reply comments by March 3, 1972. The date for reply comments was subsequently extended to March 17, 1972. A list of organizations submitting comments and reply comments is included as Appendix "A."

2. The purpose of our proposal was to provide added flexibility to land mobile station licenses in the 470–512 MHz band in the selection of antenna sites but without compromising the criteria we have established in the First Report and Order for sharing UHF-television channels 14 through 20 between land mobile and television stations. The need for antenna heights in excess of 500 feet above average terrain, as stated in the Second Further Notice, relates to the availability of suitable sites, especially in the larger cities, as well as to coverage. In many large cities, it is necessary to install antennas atop the taller buildings in order to obtain adequate coverage. The 500 foot limitation we initially established severely restricts the number of sites that may be used. In some other cities, such as San Franscisco, California, and Pittsburgh, Pennsylvania, many available sites may not be usable because the ground elevation exceeds the 500 foot maximum. All of the comments supported the objectives of this proceeding and, in general, our specific proposals. Some comments raised matters which are beyond the scope of this proceeding, while others raised issues with respect to our specific proposals which are dealt with below.

3. In its comments, AMST maintains that the R–6602 curves (from which the curves appended to the Second Further Notice were derived) underestimate the field strength at critical distances from high transmitting antennas and that radio stations operated in accordance with the proposed rules would produce interference fields far in excess of those presently permitted. In support of this argument, AMST refers to four data points in Figure 28 of R–6602 which are 15 to 25 DB above the 2000 foot antenna elevation curve.

4. Although we agree with AMST that four data points were above the 2000 foot antenna elevation curve, we do not agree with its interpretation of the significance of these data points. As was pointed out in the proceedings in Docket 16004, a large volume of data was used in deriving the R–6602 propagation curves. Distance, transmitting antenna height, time fading, and frequency were all taken into account. Individual data points were widely scattered, some falling above the curves and some below, because of measurement or processing deviations, unusual atmospheric or terrain conditions, etc. All, however, were taken into account in drawing the final R–6602 curves and a few isolated data points cannot be used to question seriously the usefulness of the curves. We must, therefore, reject AMST's suggestion that the proposed curves be discarded in favor of a single, more conservative curve, such as the DPLMRS power/height curve in Part 21 of the FCC Rules.

5. AMST also voiced concern that the Commission, by not providing for power reduction at distances in excess of 162 miles from the assumed Grade B contour of co-channel television station, might permit land mobile stations at distances greater than 162 miles with antennas higher than 500 feet without comparable power reduction. This was not our intention. The land mobile user at any distance greater than 162 miles must employ power, reduced according to transmitter site elevation, in the same manner as the user at a site nearer than 162 miles (or 130 miles where 40 DB protection ratio applies). The users at distances greater than 162 miles must employ power no greater than that permitted at 162 miles. Likewise, a user at New York, Cleveland, or Detroit where 40 DB protection is accorded certain facilities must employ power no greater than that permitted at 130 miles.

6. AMST indicated too that we should have included curves for land mobile base station power reduction related to the established adjacent channel-sharing criteria. Such curves, in our view, are not needed. Present rules prohibit land mobile base stations being located closer than 90 miles from any television station in an adjacent channel, or closer than 35 miles from that television station's assumed Grade B contour. This separation is sufficient to meet our adjacent channel-sharing criteria even in situations where the land mobile base stations operate with antenna height and power greater than those here contemplated. Thus, for example, a land mobile base station with 1 kilowatt power, transmitting from a 3,000 foot antenna (not permissible, of course, under the rules adopted herein) would generate a field strength of 64 dbu on an adjacent channel at 27 miles. Our co-channel power reduction curves would not permit the use of power anywhere close to 1 kilowatt with a 3,000 foot antenna, so that the power reduc-

tion requirements we are adopting are more than sufficient to insure compliance with our adjacent channel sharing criteria.

7. Turning now to other matters, IMSA, LMCC and EIA urged that we modify the following proposed change of Section 89.123(a):

> "For heights above 500 feet above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the Grade B contour of a co-channel television station, an authorization will not be granted unless it can be shown that actual terrain considerations are such as to provide the desired protection at the Grade B contour."

They felt that we should permit such operations even in situations where there is no intervening terrain by imposing additional power restrictions. We have reconsidered this matter and have concluded that sufficient protection would be provided the affected television station by permitting land mobile stations to operate in these rare situations but with a power level such that the field strength produced at the affected television station's Grade B contour would not exceed that over a similar path length through free space. Proposed Section 89.123(a)(7) has been changed accordingly.

8. EIA and IMSA, in their comments, indicated that the definition of power reduction in decibels below one kilowatt rather than in watts was too complex to apply. While we feel that defining the power reduction in decibels below a reference value of 1000 watts does not introduce any undue complexity, we are adding a table of decibles versus watts to minimize the difficulty on the part of the land mobile user in determining permissible power.

9. EIA suggested also that the power reduction curves developed by that organization be used in preference to those appended to the Second Further Notice. We do not agree that they would be any improvement over the power curves we proposed. In determining the permissible land mobile station power, the distance between the land mobile and the television station and the site elevation are fixed, leaving only power as a variable. It follows then, that on the graphs, power should be the dependent variable. That is the way the curves were originally drawn and we feel they should remain so. We have, however, increased the number of graphs to five for both 40 and 50 DB protection ratios. This provides more intermediate mileages making it easier to interpolate in cases where the proposed station is to be located at a point between the curves. Interpolation is linear.

10. In consideration of the foregoing, the Commission finds that adoption of the proposed rule changes, as modified herein, will serve the public interest and should contribute to the efficiency and effectiveness in land mobile radio operations.

11. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, IT IS ORDERED, That, effective, September 8, 1972, Parts 89, 91, and 93 of the Commission's Rules ARE AMENDED as shown in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-554

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
MEADVILLE MASTER ANTENNA, INC., MEADVILLE, PA.
Request for Waiver of Section 74.1103 of the Commission's Rules
Docket No. 19479
File No. SR-76177

MEMORANDUM OPINION AND ORDER

(Adopted June 28, 1972; Released July 3, 1972)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; AND JOHNSON ABSENT; COMMISSIONER BARTLEY DISSENTING AND ISSUING A STATEMENT; COMMISSIONER WILEY NOT PARTICIPATING.

1. By a Memorandum Opinion and Order, FCC 72-255, 34 FCC 2d 358, released March 29, 1972, the petition by Meadville Master Antenna, Inc. (MMA) for waiver of the program exclusivity provisions of Section 74.1103 of the Rules[1] was designated for hearing. Now before the Commission for consideration are: (a) a petition for reconsideration of that order filed April 24, 1972, by MMA together with the pleadings responsive thereto;[2] (b) a motion to strike filed by MMA May 26, 1972; and a petition for stay filed by MMA on June 9, 1972.[3]

2. As set forth in our designation order, the Commission's denial of MMA's request for a waiver of Section 74.1103[4] was set aside by the United States Court of Appeals for the Third Circuit[5] and the matter was remanded to the Commission. MMA contends that under the Court's remand order, the Commission must either grant the waiver or set forth in detail its reasons for denying the requested relief, but that the Commission has no authority under the Court's directive to order an evidentiary hearing. In support of this contention, MMA relies on the phraseology employed by the Court in its decision, Section

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[1] Effective March 31, 1972, the pertinent rules were revised and renumbered. See present Sections 76.91, 76.93, and 76.95. The revisions, however, do not affect the question herein presented.

[2] Oppositions to the petition were filed on May 9, 1972, by the Commission's Cable Television Bureau and by Lamb Communications, Inc., licensee of station WICU-TV, at Erie, Pennsylvania (hereinafter WICU-TV). A reply was filed on May 26, 1972 by MMA.

[3] For the reasons hereinafter set forth, we have disposed of the motion to strike and the petition for stay without consideration of the pleadings submitted in response thereto.

[4] 17 FCC 2d 506, reconsideration denied 25 FCC 2d 315.

[5] *Meadville Master Antenna, Inc.* v. *FCC and U.S.A.*, 443 F.2d 282 (1971).

2347(c) of Title 28 U.S.C.,[6] and Section 402(h) of the Communications Act of 1934 as amended in 1952 (47 U.S.C. 402(h)).[7] The petition is opposed by the Cable Television Bureau and WICU–TV principally on the ground that the manner in which the Court's remand order is carried out is within the discretion of the Commission.

3. As MMA points out, the Court concluded that the "summary denial of these petitions constitutes unreasonable and illegal action by the Commission." It therefore remanded the case to the Commission "so that it may set forth in detail its conclusions and the reasons for them on the issues of signal strength, as well as black and white and color signal quality" in order to enable the Court to exercise its judicial function of review. However, other comments of the Court in the decision support the validity of the action taken by the Commission rather than MMA's contention that the order designating the waiver petition for an evidentiary hearing is contrary to the Court's mandate. Thus, the Court noted that there might be "fatally defective weaknesses" in MMA's showing and it made clear that no final determination was intended until the Commission had an opportunity to "disclose the nature of the defects." Although the Court indicated that the evidence submitted by MMA "appears on its face" to support a holding that "petitioner has satisfied its burden of proof on the issue of waiver"[8] it nevertheless recognized that the Commission, "guided by the technical expertise at its command, may have good reason to find the evidence submitted in the Taylor report unconvincing." With respect to MMA's allegations that WICU–TV failed to improve color quality despite notice of the complaints received from the CATV's subscribers, the Court stated that "If true, this may be a factor which the FCC will want to take into consideration on remand." Manifestly, therefore, the Court contemplated further action by the Commission for the purpose of exploring and explaining the deficiencies, if any, in the data submitted by MMA's engineer (the "Taylor report" referred to by the Court) and in order to determine whether MMA's allegations of WICU–TV's neglect to improve poor picture quality are "true". Nothing in the Court's decision indicates any intent to

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[6] This section provided in pertinent part as follows:

§ 2347. *Petitions to review; proceedings*

* * * * * * *

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counter-evidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings. of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

[7] Section 402(h) provides:

In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

[8] Contrary to MMA's contention, the Court did not make the unqualified statement that *"petitioner has satisfied its burden of proof on the issue of waiver"* (emphasis added by MMA in its petition).

preclude an evidentiary hearing or otherwise to circumscribe the Commission's discretion to adopt such preliminary procedures as it deems necessary to comply with the remand order. In fact, the restrictive interpretation of the Court's mandate urged by MMA is not only unwarranted but it would be inconsistent with the weight of authority concerning the judicial review function and the broad discretion conferred upon the Commission to specify the procedures to be adopted in carrying out its statutory obligations.

4. The "illegal action by the Commission" which resulted in the reversal of its order was the *summary* denial of MMA's waiver petition without detailing the supporting facts or adequately specifying the reasons therefor. The remand did not prescribe the method which the Commission must adopt to cure the deficiencies in its order, and the principle enunciated by the Supreme Court in *F.P.C.* v. *Idaho Power Co.*, 344 U.S. 17, 20 (1952), is particularly applicable here. In that case, the Court stated:

> ". . . the function of the reviewing court ends when an error of law is laid bare. At that point, the matter once more goes to the Commission for reconsideration."

In *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145 (1940), the Court noted that an administrative determination involving a legal question open to judicial review "does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge." See also *United Gas Improvement Company* v. *Continental Oil Co.*, 381 U.S. 392, 406 (1965); *McBride* v. *Smith*, 405 F. 2d 1057, 1059 (2d Cir. 1968). In the absence of express language to the contrary, we believe that we are justified in holding that the Court, after having "laid bare" the Commission's "error of law," intended to leave to the Commission the enforcement of "the legislative policy committed to its charge."

5. By statute, broad authority is conferred upon the Commission to fashion the procedures to be used in the discharge of its obligations to protect the public interest. Thus, Section 4(i) of the Communications Act of 1934, as amended (47 U.S.C. 154(i)), authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." Section 4(j) (47 U.S.C. 154(j)) empowers the Commission to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." Interpreting the pertinent provisions of the Act, the Supreme Court held that the Commission has been granted extensive authority to devise the procedures and to specify the manner of conducting its business which it deems best to effectuate its statutory obligations. *FCC* v. *Pottsville Broadcasting Co., supra*, 309 U.S. at 138; *FCC* v. *WJR*, 337 U.S. 265, 282 (1949). The decision of the Commission to hold an evidentiary hearing before undertaking to set forth its "conclusions and the reasons for them" is well within its statutory authority as interpreted by the Courts, and it is consistent with the purpose and intent of the mandate of the Third Circuit in this case.

6. Sections 402(h) of the Communications Act and 2347 of Title 28 U.S.C. cited by MMA have no application here. Section 402(h) relates only to appeals to the United States Court of Appeals for the District of Columbia from decisions and orders of the Commission in certain specified types of cases under Section 402(b) of the Act, whereas the judicial review proceeding in the case under consideration was initiated pursuant to a petition for review under Section 402(a). As for Section 2347, nothing therein contained undertakes to regulate or prescribe the procedure to be followed by the administrative agency after a reversal and remand of its decision by the court. The Commission has determined that an evidentiary hearing is essential in order to comply with the Third Circuit Court's mandate and, as we have heretofore shown, such action is well within the Commission's discretion.

7. *WKAT, Inc.* v. *FCC*, 296 F. 2d 375, *cert. denied* 368 U.S. 841, upon which MMA also relies is likewise inapposite. In that case the procedural question presented was whether the decision of the Commission after an evidentiary hearing conducted pursuant to the Court's remand order was subject to judicial review without the filing of a new notice of appeal when the Court had expressly retained jurisdiction over the case. That case provides no support for MMA's argument that the Commission must obtain judicial approval before it may conduct an evidentiary hearing. Of course the Commission's decision based on the hearing record will be subject to judicial review, but it is premature at this stage of the administrative proceeding to discuss whether the initiation of a new appeal will be necessary.

8. In our view, the pleadings raise substantial and material issues of fact which require a hearing for their resolution. The Taylor engineering report, including that portion concerning color quality of WICU-TV's signals, is based on studies conducted some time prior to October 21, 1966 (the date of the report). WICU-TV alleges, however, that in September, 1971, new R.C.A. TTS-1A delay equalization equipment was installed in its transmission system which improves color sharpness and color registration. Since the critical issue is whether WICU-TV should be accorded nonduplication protection in the future, the public interest requires that the issue be resolved on the basis of the situation which exists today, not that which existed in 1966. In a comparable situation the Second Circuit held in *McBride* v. *Smith*, 405 F. 2d 1057, 1060 (1968), that "where an agency's determination affects future status, courts have felt free to remand when the record has become so stale that they cannot determine what the right result should be." Likewise, an updating of the record through an evidentiary hearing is clearly required in this case in order to enable the Commission to make an informed judgment as to whether a waiver presently is in the public interest. See also: *Fly* v. *Heitmeyer*, 309 U.S. 146, 148 (1940); and *Easton Publishing Co.* v. *F.C.C.*, 185 F. 2d 987 (D.C. Cir. 1950). These cases upheld the right of the Commission to conduct an evidentiary hearing after remand by a court where the Commission's actions were predicated on public interest considerations.

9. It further appears that WICU-TV, in an opposition which is supported by an engineering statement, challenges the sufficiency and

validity of the Taylor engineering report. Also, the Bureau in its opposition points out that through the hearing process, the "validity of the engineering procedures used by Meadville—especially the so-called 'grid method'—can best be tested in such a way, and its accuracy, as opposed to measurements taken along a radial pursuant to TASO procedures, be judged." These are matters which we are required to explore under the Court's mandate. We held in our designation order that the "formal taking of further evidence, coupled with an in-depth analysis by an examiner, will enable the Commission to more fully" comply with the Court's directives to set forth our conclusions and the reasons for them; and we adhere to the views therein expressed.

10. With respect to the burden of proceeding with the initial presentation of evidence, however, we believe that our designation order should be modified. The Court accorded considerable weight to the engineering data and other evidence submitted by MMA concerning WICU–TV's signal strength and the quality of its black and white and color signal, and to the absence of adequate support for the Commission's denial of the waiver petition. Under the circumstances, we deem it more appropriate to require WICU–TV and the Bureau to proceed with the initial presentation of evidence on Issues (2) and (3).[9] As to Issue (1),[10] MMA alleges in its reply pleading that the "location of service contours was not contested and their actual location is unimportant." It would appear therefore that Issue (1) may readily be resolved by a stipulation of the parties. No other change in our designation order is called for.

Other Miscellaneous Pleadings

11. On May 26, 1972, MMA filed a motion to strike the engineering statements attached to WICU–TV's opposition. The engineering statements were submitted in support of WICU–TV's contention that the existing record is inadequate and that an evidentiary hearing is essential. Since MMA argued in its petition for reconsideration that a hearing is unnecessary, the engineering statement is clearly relevant to the matter under consideration and the motion to strike must be denied.[11]

12. MMA petitioned on June 9, 1972, for a stay of the hearing in this proceeding until the Commission acts on its petition for reconsideration or until the Court, after timely application by MMA, has an opportunity to construe its order. Insofar as the petition seeks a stay pending disposition of the petition for reconsideration, it is now moot.

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[9] These issues are as follows:

(2) To determine whether the technical quality of WICU–TV's black-and-white signal reception in the community served by Meadville Master Antenna, Inc., is substantially inferior to that of WFMJ–TV.

(3) To determine whether the technical quality of WICU–TV's color signal reception in the community served by Meadville Master Antenna, Inc., is substantially inferior to that of WFMJ–TV.

[10] Issue (1) provides:

(1) To determine (a) whether the community served by Meadville Master Antenna, Inc., is encompassed in whole or in part by the actual Grade B contour of WICU–TV, and (b) whether the actual signal contour of WFMJ–TV has the same or higher priority, in terms of the priorities established by Section 74.1103 (New Section 76.91 effective March 31, 1972) of the Commission's Rules, compared with the actual signal of WICU–TV.

[11] We have not considered any responsive pleadings to the motion to strike submitted by other parties in the disposition of this motion since we believe denial is required on the basis of the petition for reconsideration and the pleadings filed in response thereto.

The request for a stay pending the institution of judicial proceedings and action thereon by the Court must be denied both because there is no reasonable likelihood of success by MMA and because it will not suffer irreparable injury if the stay is denied. Any inconvenience or expense to which MMA may be subjected by reason of its being required to proceed with the hearing is not the type of irreparable injury which justifies the grant of a stay. *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921, 925 (D.C. Cir. 1958). In our designation order we directed that the "hearing process be conducted as expeditiously as possible" and no modification of that directive is warranted.[12]

13. ACCORDINGLY, IT IS ORDERED That the petition for reconsideration filed by Meadville Master Antenna, Inc. on April 24, 1972 IS GRANTED to the limited extent set forth herein but, in all other respects, the said motion IS DENIED.

14. IT IS FURTHER ORDERED That the motion to strike filed by Meadville Master Antenna, Inc. on May 26, 1972, IS DENIED.

15. IT IS FURTHER ORDERED That the petition for stay filed by Meadville Master Antenna, Inc. on June 9, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary*.

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I dissented to setting the waiver request for evidentiary hearing. 34 FCC 2d, 358, 360.

I dissent here to denying the Petition for Reconsideration. I would grant the waiver request.

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[12] Because of the need for expedition we have disposed of the stay petition without awaiting responsive pleadings.

F.C.C. 72-675

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of NEAL P. CORTELL, AARON M. I. SHINBERG, AND PAUL KAZAROSIAN (TRANSFERORS) AND VENDELCO, INC. (TRANSFEREE) For transfer of control of Merrimack Valley Communications, Inc., Permittee of Commercial Television Station, WXPO-TV Manchester, N.H.	File No. BTC-6763

ORDER

(Adopted July 26, 1972; Released August 1, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMITTEE HOOKS NOT PARTICIPATING.

1. The transferee, Vendelco, Inc., is legally, technically, financially and otherwise qualified.

2. Initial operating authority for the station was issued October 30, 1969. The transfer of control application was filed December 27, 1971. Therefore, the application is subject to Section 1.597 of the Commission's Rules.

3. The applicants have requested a "waiver" of the rule on the grounds of unavailability of capital. In support thereof they have shown that the permittee is bankrupt and currently involved in reorganization proceedings under Chapter XI of the Bankruptcy Act; that every effort was made to secure additional financing, but to no avail; that none of the transferors will realize a profit from the sale of their stock; that none of the transferors has ever had any other broadcast ownership interests and that none has any other broadcast ownership interests at the present time.

4. The transferee is fully qualified, and there is no evidence of trafficking. An adequate showing of unavailability of capital has been made, so as to constitute an exception to the hearing requirement of the Three Year Rule. A grant of the application would serve the public interest, convenience and necessity. Accordingly, the above-captioned application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-707

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CHARLES A. HASKELL, MAX G. BROOKS, AND ALVIN G. FLANAGAN, AS COEXECUTORS OF THE ESTATE OF JOHN C. MULLINS, DECEASED (ASSIGNORS) AND MISSION DENVER CO. (ASSIGNEE) For Assignment of License of Station KBTR, Denver, Colo.	File No. BAL-7409

MEMORANDUM OPINION AND ORDER

(Adopted August 2, 1972; Released August 2, 1972)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; JOHNSON AND HOOKS ABSENT.

1. Now before the Commission for consideration is a motion for stay of the effective date of the Commission's Memorandum Opinion and Order, FCC 72-674 released July 28, 1972, filed by Colorado Citizens for Broadcasting *et al.* In that order we granted the application for the assignment of the license of Station KBTR, Denver, Colorado, from Charles A. Haskell, Max G. Brooks and Alvin G. Flanagan, coexecutors of the Estate of John C. Mullins (Deceased) to Mission Denver Company, and denied petitions to deny the assignment filed by Colorado Citizens for Broadcasting *et al.* and Lakewood Broadcasting Service, Inc.[1]

2. In support of its stay request, Colorado Citizens for Broadcasting *et al.* petitioner asserts that irreparable injury to the public will result unless the Commission stays the effectiveness of its order for 30 days to allow Citizens an opportunity to prepare appropriate pleadings or seek judicial review. Citizens' allegations of irreparable injury to the public are based on the assignee's plans to reduce the station's news staff from 23 to 3 persons pursuant to its proposed change of format from "all news" to country music.

3. It has been our practice to grant stays pending judicial review only upon a substantial showing by the petitioner that it will suffer irreparable injury or that the public interest will be adversely affected by the denial thereof, and that there is a reasonable likelihood that it will succeed on the merits of its appeal. *Wheeling Antenna Company, Inc.*, 26 FCC 2d 687 (1970); *Clarkston Broadcasters*, 24 FCC 2d 288

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[1] On July 31, 1972, Lakewood Broadcasting Service, Inc. filed a "Statement In Support of Motion For Stay."

(1970). No adequate showing has been made here. Since twenty other Denver-area radio stations provide a total of 291 hours and 39 minutes of news per week,[2] we are unable to perceive how diminution of news service at Station KBTR merits the relief which petitioner requests. The motion for stay, therefore will be denied. However, a temporary stay will be granted to afford petitioner an opportunity to apply for judicial stay should it seek judicial review of our Memorandum Opinion and Order, FCC 72-674, released July 28, 1972. Our stay is conditioned upon petitioner filing a notice of appeal and motion for stay within seven days of the release of this order.

4. Accordingly, IT IS ORDERED That the motion for stay filed by Colorado Citizens for Broadcasting *et al.* on July 27, 1972, IS DENIED.

5. IT IS FURTHER ORDERED That the effectiveness of the Commission's Memorandum Opinion and Order, *supra*, IS STAYED until the United States Court of Appeals acts upon any motion for stay *pendente lite* which Colorado Citizens for Broadcasting *et al.* must file within seven days of the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[2] See Memorandum Opinion and Order, FCC 72-674, released July 28, 1972, para. 24.

F.C.C. 72-684

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of OSCEOLA TELEPHONE CO. For Consent To Transfer of Control of Station KSJ50 in the Domestic Public Point to Point Microwave Radio Service	File No. 5532-C1-TC-72

MEMORANDUM OPINION AND ORDER

(Adopted July 26, 1972; Released July 31, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has before it the above captioned application filed on February 23, 1972 for consent to transfer of control of Osceola Telephone Co., licensee of microwave station KSJ50, from Continental Telephone Corp. to Universal Telephone, Inc. The application is informally opposed by the Wisconsin Public Service Commission (WPSC) in letters dated April 26 and June 23, 1972.

2. The sale of Osceola is only part of a larger transaction which also involves the transfer to Universal of Badger Telephone Co., Frederic Telephone Co., Lakeland Telephone Co., Solon Springs Telephone Co. and Poplar Telephone Co. However, these latter companies have no common carrier facilities.[1] Essentially the entire transaction involves some $2,456,000 which Continental will accept in promissory notes. (Osceola is valued at $619,000 in the transaction.)

3. WPSC opposes the transfer primarily on the basis of Universal's financial condition. It points out that Universal has lost $2,628,337 on existing operations in 1969 and 1970 and that preliminary indications are that the loss continued in 1971. It contends that this loss, which was equal to 42.6 percent of common share equity at the beginning of the two year period, prevents Universal from securing adequate capital to finance the construction of needed telephone plant. Moreover, WPSC argues that its experience with the present operating subsidiaries of Universal do not provide reasonable assurance to the subscribers of Osceola that it will continue to provide adequate service. WPSC also cites several examples of problems it is having with existing subsidiaries of Universal.

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[1] Solon Springs Telephone is authorized two stations in the Telephone Maintenance Radio Service. WPSC petitioned the Commission's Safety and Special Radio Services Bureau for reconsideration of an earlier grant of a transfer of control application involving these stations, but the petition was denied on the grounds that the financial matters alleged have no bearing on the Commission's consideration of such applications.

4. In response Universal contends that it is financially qualified, and has indeed made substantial improvements and modernizations in its telephone companies in the last ten years, having spent more construction money per subscriber than the average company in Wisconsin. It argues that even though it took losses in 1969 and 1970, its equity increased in that period by $4,336,624 and that its composite debt-equity ratio is a conservative 51 percent–49 percent. Universal states that it has a loan commitment for $14,000,000 to cover construction for the next eight years, and it has never had a problem securing construction loans. It projects construction through 1977 at $15,353,962 with $6,745,000 allocated for the six companies to be acquired (including $1,420,000 for Osceola which would involve, among other things, conversion to a one party system in 1976).

5. It is evident that the concern of WPSC in this case goes beyond the one microwave station that is the subject of the application before us. Indeed its interest goes far beyond Osceola to Universal which presently controls a number of Wisconsin telephone companies and would under the proposed transaction gain six more. The Commission's jurisdiction in this situation is Section 310(b) of the Communications Act, under which we must determine whether the proposed transfer of control of the microwave station would serve the public interest. To intelligently resolve the questions posed by WPSC would require a hearing which would primarily concern Universal and the operation of its intrastate telephone business.

6. Although it appears that WPSC may not have jurisdiction to deal with all the ramifications of the transactions involved, we do not believe that it is appropriate for us, on the basis of a single microwave station, to embark on an extensive proceeding involving what is essentially a state matter. Moreover, we note that station KSJ50 is used to serve the U.S. Government exclusively as part of the Autovon network and is not an integral part of Osceola's intrastate telephone system. As to that station we find that Universal would be legally, financially, technically, and otherwise competent to own and to insure adequate operation of the station. And in view of Universal's planned improvement of Osceola's system, it appears that the transfer of these radio facilities would serve the public interest.

7. Accordingly, IT IS HEREBY ORDERED That the above captioned application IS GRANTED and that the objections of WPSC ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary*.

F.C.C. 72-653

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re applications by
THE OUTLET CO., PROVIDENCE, R.I.
AND
W.R.G. BAKER TELEVISION CORP., SYRACUSE, N.Y.
For Transfer of Control and Renewal of License of Station WNYS-TV, Syracuse, N.Y.

JULY 19, 1972.

THE OUTLET CO.,
176 Weybosset Street,
Providence, R.I. 02902

W.R.G. BAKER TELEVISION CORP.,
Shoppingtown,
Syracuse, N.Y. 13214

GENTLEMEN: This refers to (1) the application for transfer of control of W.R.G. Baker Television Corporation licensee of Station WNYS-TV (Channel 9), Syracuse, New York, from the principals of W.R.G. Baker, Inc., *et al.* to the Outlet Company and (2) the license renewal application for this station. On June 8, 1972, the Syracuse Coalition for the Free Flow of Information in the Broadcast Media (SCFFI) withdrew its Petition to Deny the WNYS-TV renewal application in view of its negotiations with transferee which culminated with a "Statement of Operating Policy" concerning the station's hiring practices and service to minority groups in the community which "Statement" was filed as an amendment to the above transfer application.

Agreements such as the above come within the discretion of the licensee, in meeting in good faith and equitably the needs and interests of his area. See 1960 Programming Statement, 20 RR 1902 (1960). We believe it appropriate, however, to note one possible problem in the agreement and to make clear what the licensee's responsibilities are in this important area. The ultimate responsibility in the matters of programming and program scheduling must lie with the licensee. As we emphasized in attachment A to Section IV-B of the transfer application (FCC Form 315) concerning TV program service:

> . . . broadcasters, mindful of the public interest must assume and discharge responsibility for planning, selecting and supervising all matter broadcast by their stations, whether such matter is produced by them or provided by networks or others.

There are provisions in the agreement that are ambiguous and do raise problems in this respect (e.g., "the selection of topics or issues to be aired by the respective groups shall be their determination subject only to final review by station personnel, for compliance with the Communications Act of 1934,"; as stated, compliance with the Act entails not only observance of policies such as no obscenity or lottery but also licensee responsibility to make the judgment that the programming does serve the public interest). We therefore stress that the agreement is to be construed and implemented in accordance with the above fundamental policy, and that any provision that is in fact intended to curtail improperly the licensee's discretion to make programming judgments in the public interest would of course be of no force or effect.

Upon finding that the transferee is fully qualified, and that the public interest, convenience and necessity will be served thereby, the Commission has granted the WNYS–TV renewal and transfer applications. The grant of the renewal application is made subject to the condition that the transfer application be consummated within 45 days of the date of these grants and that the Commission be notified of such consummation within one day thereafter. Failure to meet this condition will render these grants null and void, and will cause the renewal application to revert to pending status.

The grant fee in this transaction is $95,363.52 based on a consideration of $4,768,176.00. Since the consideration here is publicly traded stock of the transferee corporation, the Commission determined that its fair value is its market closing price on the day the contract supporting the transfer was executed.

Commissioner Johnson concurring and issuing a statement; Commissioner Hooks not participating.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

Concurring Opinion of Commissioner Nichloas Johnson

I concur in this item only because of the assurances I have received that the FCC intends to provide the community group here with as much programming discretion as that possessed by other program originators.

Stations regularly, and properly, delegate programming authority to many program sources: network programming, independent syndicated programs, and even their own employees. A disc jockey, for example, may have virtual autonomy in selecting the records he chooses to play and what he will say about them. Stations rarely "discharge responsibility for planning, selecting and supervising" the network programs that come down the line and go out over their transmitters in any but the most theoretical and superficial sense. Syndicated radio and television material is also (virtually always) simply carried intact in the time slot regularly scheduled for it by the station.

In short, a licensee may make a judgment that the "public interest" will be served by carrying "The Beverly Hillbillies," or "Issues and Answers," without making a precise judgment as to *each segment*. It may decide that a disc jockey's daily program is generally in "the public interest" without passing judgment on each record that will be played, and pre-clearing a script of all comments to be made.

In other words, a broadcaster—like every other businessman or administrator—may (indeed, must) delegate programming responsibility in ways that leave him only the most theoretical control. In some respects—such as the independence of broadcast journalism—the FCC would even encourage practices that would insulate those with programming responsibility from management intervention in details. Programming by local community groups might very well be considered in this light: the *less* management has to do with "planning, selecting and supervising" such programming the *more* the licensee is serving the public interest.

The need throughout the country is for more opportunity for community involvement and control of programming, not less.

Needless to say, a licensee need not give regular programming time to any given community group. It cannot barter away its theoretical, "ultimate responsibility" for who, and what, is broadcasting over its facility.

But it clearly can delegate its programming responsibility to others. That is all the licensee and community group have agreed to do in this instance—and commendably so, in my judgment. As I read, and understand, the FCC's action today it has essentially ratified that agreement.

Based on that understanding, I concur.

F.C.C. 72-673

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

Inquiry Into Policy To Be Followed in Future Authorization of Overseas Dataphone Service	Docket No. 19558

NOTICE OF INQUIRY

(Adopted July 26, 1972; Released July 31, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. By letter of June 17, 1971, the Xerox Corporation requested the Commission to give consideration to the removal of existing limitations which restrict the public's use of the switched telephone network from the overseas transmission of data and facsimile signals alternately with voice. It appears that this letter is growing evidence of an increasing public interest in the availability of a service, similar to that available among the 48 contiguous states and between those states and Hawaii, Alaska and Canada and commonly referred to as "dataphone" service. In general, dataphone service permits subscribers to message toll telephone service, who have secured appropriate equipment, to use that service to send data, facsimile, or record communications alternately with voice at regular message rates. The aforementioned letter asserts that currently available procedures use multiple carrier facilities for overseas transmission of data and facsimile signals and are unsatisfactory in meeting the needs of many users, as they induce the recording and retransmission of the signal at each international gateway resulting in so much loss of time, flexibility, message quality and confidentiality as to be unacceptable, even without consideration of the costs involved. The Xerox Corporation also asserts that many users have significant demands for data and facsimile service, but their requirements do not justify a dedicated private line for alternate or simultaneous transmission of voice and record communications.

2. American Telephone and Telegraph Company (AT&T) and the three principal record carriers were requested by letter dated July 2, 1971, to comment on the request of the Xerox Corporation. AT&T replied that the request appeared a reasonable one, and that AT&T customers in the overseas field have also indicated similar requirements. It further states that, while details remain to be worked out, AT&T takes a favorable view of the request and would file an appropriate application and tariff revisions as soon as practical.

3. RCA Global Communications, Inc. (RCA Globcom) and Western Union International, Inc. (WUI) submitted statements in which they maintain that their services, without accompanying unlimited voice use and without access to the domestic telephone network are not serving the public need. These companies and ITT World Communications Inc. (ITT Worldcom) maintain that dataphone service is essentially a record service, and under the principles of the Commission's TAT-4 decision (*American Telephone and Telegraph Company*, 37 F.C.C. 1151 (1964)) cited by some of these carriers the international record carriers should be authorized to provide the overseas portion of the service with unlimited access to the domestic telephone systems. These carriers maintain that the telephone company should volunteer interconnection of its domestic network. ITT Worldcom suggests it will initiate negotiations for interconnections and ask the Commission to assist in this regard. RCA Globcom and WUI request that in the event of AT&T's failure to permit interconnection, the Commission should order it to do so. These carriers state, as indicated, that the interconnection of the domestic telephone network with their facilities is technically feasible, but they include no data on equipment required for such purpose; the cost thereof; the procedures for handling calls, including those involving direct distance dialing and those handled by operators; the delay, if any, in calls handled by the telegraph carriers' overseas facilities; prospective rates; billing procedures; divisions of tolls among the telephone company or companies involved, the international record carriers and the foreign carrier or carriers, availability of direct circuits to overseas countries, and the procedures and arrangements for the handling of calls at and beyond these carriers' overseas terminals.

4. ITT Worldcom notes that initiation of the service depends on first obtaining agreement with its foreign correspondents. It believes that initiation of the service should be based on an international consensus regarding operating agreements and standards. It further states the CCITT has a joint working party with respect to new networks and data transmission and that further information on this subject should be forthcoming. Monthly reports filed with the Commission do not indicate there have been negotiations between the United States carriers and foreign countries. The willingness of the foreign carriers to participate in providing the service either with the record companies, the telephone companies, or both, and particularly the possibility of the interconnection of the record carriers' overseas circuits to the foreign telephone networks are matters to be explored and considered in formulating a policy for the provision of overseas dataphone service.

5. The record carriers also maintain that if the telephone company is permitted to provide dataphone service to overseas points there will be a serious adverse economic impact on their existing services. They do not however, give us specifics with respect to the types of traffic, the estimated amounts of revenue to be affected, the basis of such estimates or the expected volume of traffic and revenues forecast for the dataphone services.

6. In the Commission's recent inquiry into practices to be followed in the future licensing of facilities for overseas communications

(Docket Number 18875), both RCA Globcom and WUI submitted estimates of circuit requirements predicated upon the record carriers being authorized to provide the service. During the course of that proceeding remarks were made indicating that dataphone service is totally impractical over satellite circuits. WUI, in that proceeding, indicated cable circuits are essential for providing dataphone service. In response to such claims, the Communications Satellite Corporation (Comsat) states that dataphone service is being provided via satellite circuits between Hawaii and the Mainland. Comsat does state, that some error detection and correction systems essential to some data transmission systems are not technically compatible with satellite circuits in that they were developed for cable application. It further states, however, that there is new equipment on the market that adequately performs the required error detection and correction functions when used with satellite circuits. ITT Worldcom, WUI and RCA Globcom, in their most recent comments, have not indicated whether or not they believe satellite circuits will be satisfactory for providing dataphone service with the use of error detection and correction equipment which Comsat alleges is suitable for use with satellite circuits.

7. WUI's initial application for satellite circuits for service to Europe (File No. T–C–1896) among other things requested twenty-five satellite circuits for providing dataphone service to Europe. This portion of the application, although withdrawn, requested that the record carriers be accorded the exclusive right to provide dataphone service; that AT&T be required to provide interconnection between its domestic telephone network and the record carriers' overseas circuits; and that AT&T be denied satellite circuits for such use unless it agreed to make the requested interconnections. The Western Union Telegraph Company (WUT) filed comments in this matter indicating a desire to provide the domestic portion of the dataphone service or other data/voice overseas service. Questions were also raised as to the compatability of the equipment of WUT and of AT&T for dataphone service with equipment of foreign administrations. Contrary to the assertions of the record carriers, AT&T stated its equipment for dataphone service is compatible, except in minor respects, with overseas equipment built to CCITT specifications. With respect to WUI's claim that the record carriers should be accorded the exclusive right to provide dataphone service, based in part on the Commission's TAT–4 proceeding, AT&T took the position that such decision was not determinative of whether or not AT&T should provide dataphone service. AT&T calls attention to the Commission's statement, in connection with the revision of its tariff and that of Hawaiian Telephone Company to introduce dataphone service between the Mainland and Hawaii, that AT&T's right to furnish dataphone service to overseas points, except Hawaii, will be decided by the Commission when and if AT&T applies for authorization to provide such services. Hawaiian Telephone Company also filed a statement in this proceeding in opposition to interconnection between telephone networks and the facilities of the international record carriers.

8. On July 14, 1972, WUI tendered for filing an application again requesting authorization pursuant to Section 214 of the Communications Act of 1934 to: (a) Provide overseas dataphone service, this time to all overseas points; and (b) acquire on an indefeasible right-of-user basis a one-half interest in 12 voice circuits in the CANTAT–II cable system for the provision of this service between the United States and the United Kingdom. The application, as tendered, is defective in that it fails to provide most of the essential information required to be contained in such an application by Section 63.01 of the Commission's Rules. The application, among other things, fails to: (a) Describe how the proposed interconnection with the domestic telephone network would be effectuated; (b) give a description of the cost of necessary equipment needed to effect such interconnection and the other costs involved in providing the proposed service; (c) recite any estimate of demand for the proposed service; (d) give any estimate of the revenues expected to be produced by the proposed service; and (e) provide a statement of the proposed tariff charges and regulations for the proposed service. In view of these deficiencies, the application will be returned as unacceptable for filing and consideration pursuant to Section 1.746 of the Commission's Rules. In any event, as noted below, we do not believe the processing of individual applications would be a satisfactory method of arriving at policy determinations in this matter.

9. The foregoing indicates that there are numerous factors to be considered in determining whether or not dataphone or a similar service should be authorized to new overseas points, and which carrier, or carriers should be authorized to provide the service. We feel that we can best resolve the various questions by adopting policies governing the provision of dataphone service in the context of this inquiry rather than in passing on separate applications by the carriers to provide such service. We are therefore initiating this inquiry pursuant to Sections 201, 202, 205, 212, 403, 4(i), 214 and 303(b), of the Communications Act of 1934, and Subsection 201(c) of the Communications Satellite Act. To this end we are requesting interested parties to submit information, views and recommendations with respect to the following matters (whenever appropriate, the data should be presented on a year by year basis through 1980):

> (a) The nature and extent of the current and expected public demand for dataphone or an equivalent service between U.S. and overseas points, quantified in terms of messages and minutes, and the factors underlying such estimates.
>
> (b) The nature and extent of current public usage of dataphone service between the contiguous 48 states and overseas points with which the service is now authorized.
>
> (c) The technical and operational feasibility of providing dataphone or an equivalent service via satellite, including the availability and cost of error detection and correction equipment.
>
> (d) Whether the restrictions set forth in the facility authorizations issued to AT&T and in the message toll telephone tariffs of AT&T implementing such authorizations should be removed to permit use of the public switched telephone network for the over-

seas transmission of data and facsimile alternately with voice communications; and, in this connection,

(i) the costs of such proposed service, by principal items of investment and operating expenses;

(ii) the charges proposed to be made for such service;

(iii) the revenues, gross and net, expected from such service;

(iv) the operating methods which would be applied to such service; and

(v) proposed arrangements, operating and financial, with overseas correspondent;

(e) Whether the international record carriers should be authorized to provide overseas dataphone or an equivalent service and, in this connection,

(i) the nature of interconnection and operating arrangements and agreements that would be involved between each international record carriers and domestic carriers, including billing practices, division of tolls, etc.;

(ii) the effect of such arrangements and agreements on speed, efficiency, quality and cost of service which may be anticipated, in case of both customer and operator dialed calls;

(iii) proposed arrangements, operating and financial, with overseas correspondents;

(iv) the costs which would be incurred by each respondent for such service, by principal items of investment and operating expenses;

(v) the charges proposed to be made for such service

(vi) the revenues, gross and net, expected from such service.

(f) The relative efficiencies of record carriers, on the one hand, and voice carriers, on the other, in furnishing such services;

(g) An estimate of number of circuits, in addition to those authorized each carrier for existing services, that will be required for the proposed services;

(h) The effect on the revenues and service requirements of each respondent carrier, should one or more carriers in addition to said respondent be authorized to provide overseas dataphone or equivalent services;

(i) How the public interest, convenience and necessity will be served by authorizing one or more international carriers to provide overseas dataphone or equivalent services;

(j) Any other information considered relevant to this inquiry.

10. Pursuant to the applicable procedures set out in Section 1.415 of the Commission's Rules and Regulations, interested parties may file written comments on or before the 60th day after release of this notice and reply comments on or before the 90th day after release of this notice relating to each of the foregoing matters applicable to it. An original and fourteen copies of all comments shall be filed with the Commission. The following carriers are especially requested to respond to this inquiry and the appropriate questions above: Puerto

Rico Telephone Company, All America Cables and Radio, Inc., American Telephone and Telegraph Company, Communications Satellite Corporation, French Cable Company, Hawaiian Telephone Company, ITT World Communications Inc., the Virgin Islands Telephone Companl, ITT Communications, Inc-Virgin Islands, Western Union International, Inc., RCA Alaska Communications Inc., RCA Global Communications, Inc., Tropical Radio Telegraph Company, The Western Union Telegraph Company, and the United States Independent Telephone Association.

All persons filing comments should serve copies thereof on each of the persons listed above. Reply comments shall be served on the foregoing persons as well as any interested party filing original comments.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-637

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
PANHANDLE BROADCASTING CO., INC., PANAMA CITY, FLA.
For Construction Permit for a New Television Broadcast Station on Channel 13, Panama City, Fla.
File No. BPCT-4466

MEMORANDUM OPINION AND ORDER

(Adopted July 19, 1972; Released August 1, 1972)

BY THE COMMISSION: COMMISSIONER HOOKS NOT PARTICIPATING.

1. Now before the Commission are a Memorandum Opinion and Order (FCC 72-323) adopted April 5, 1972, released April 10, 1972, granting the captioned application, but requiring divestment by Mr. Denver T. Brannen of his interest in station WPAP-FM, Panama City; and a petition for partial reconsideration of that action filed on May 10, 1972, by Panhandle Broadcasting Co., Inc. (Petitioner).

2. Inasmuch as Mr. Denver T. Brannen, a 40 percent stockholder in the applicant, is the controlling stockholder and chief executive of Dixie Radio, Inc., licensee of stations WPAP-FM and WDLP(AM) in Panama City, petitioner requested a waiver of section 73.636(a)(1) of the rules[1] to permit Mr. Brannen to retain his interest in station WPAP-FM. The Commission, on April 14, 1972, granted an assignment of license of station WDLP(AM) to DAE Broadcasting Company, which was consummated on May 4, 1972. The facilities of station WPAP-FM, which were excluded from that assignment, are located on the WDLP property, and Mr. Brannen has an agreement with DAE Broadcasting Company allowing him to continue the operation of WPAP-FM until the physical facilities can be moved to the proposed television site. The rights under this agreement are not assignable. The petitioner now asks the Commission to reconsider that portion of the Commission's action which required divestment of any interest in WPAP-FM by Mr. Brannen, as a condition precedent to the grant of operating authority.

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[1] Section 73.636(a)(1) provides, in pertinent part, that:
"(a) No license for a television broadcast station shall be granted to any party (including all parties under common control) if:
"(1) Such party directly or indirectly owns, operates, or controls: . . . one or more FM broadcast stations and the grant of such license will result in the Grade A contour of the proposed station, computed in accordance with § 73.684, encompassing the entire community of license of one of the FM broadcast stations, or will result in the predicted 1 mv/m contour of the FM broadcast station(s), computed in accordance with § 73.313, encompassing the entire community of license of the proposed station; . . ."

3. In support of partial reconsideration, petitioner alleges that to require divestment would result in substantial economic losses to Mr. Brannen. Petitioner alleges that the cost of constructing a new separate FM facility would be almost $83,000 and that anyone wishing to purchase the station would have to pay the purchase price plus costs for new construction, resulting in a total price which makes the station, for all practical purposes, a non-saleable facility. Petitioner attempts to support this argument by submitting an affidavit from Mr. Brannen in which he states that he was offered station WMAI-FM, another FM station licensed to Panama City, at a price of $50,000, that WMAI-FM is technically superior, and is, therefore, a more valuable facility than WPAP-FM. Thus, petitioner concludes that unless Mr. Brannen is willing to sell WPAP-FM for a confiscatory price, WPAP-FM is not saleable since no prospective purchaser would pay the fair market price of the station when faced with the additional costs of constructing a new facility. Petitioner urges that the better course would be to waive the rules and permit Mr. Brannen to retain the station with the possibility of recouping losses from operational economies resulting from the joint TV-FM operation.

4. The multiple-ownership rules of the Commission have as their objective the fostering of maximum competition in broadcasting and promoting diversification of programming sources, viewpoints, and ownership. The concentration-of-control rules (73.636(b)) aim at attaining these objectives nationally and regionally, while the duopoly rules (73.636(a)) are designed to reach these objectives locally and regionally. The *First Report and Order* in Docket No. 18110, adopted March 25, 1970, 22 FCC 2d 306, amended the multiple-ownership rules by extending the duopoly provisions to prohibit common ownership, operation, or control of more than one unlimited-time broadcast station in the same market ("one-to-a-market"), regardless of the type of broadcast service involved.[2] The proceedings in Docket No. 18110 were first instituted in March 1968, and the decision was reached after lengthy proceedings and consideration of submissions by approximately 120 parties, including the Department of Justice. In its decision, the Commission noted that specific finding of improper conduct or practice was not a necessary element in application of the rule. The Commission also noted that the "one-to-a-market rule" should be applied, unless some other relevant public interest consideration is found to outweigh the importance of diversifying control.

5. The petitioner's showing in support of its request for waiver of the "one-to-a-market" provision rests basically on alleged damage to the private interests of Mr. Brannen arising from the terms of the contract with the new owners of standard broadcast station WDLP, upon whose property the facilities of WPAP-FM are located. Under this contract, Mr. Brannen is required to move the WPAP-FM facilities "with all due diligence," and his rights to use the WDLP property in the meantime are not assignable. Because of these contract terms, the petitioner argues that the cost of moving WPAP-FM is so great as to

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[2] On reconsideration, 28 FCC 2d 662 (1971) the Commission limited the scope of the rule. However, it is clearly applicable in this situation.

make it a virtually worthless property, and therefore unsaleable. It is argued, further, that if Mr. Brannen is allowed to retain WPAP–FM, its operation can be combined with that of the new television station, and economies of scale could be accomplished. This, it is urged, would allow WPAP–FM to begin to achieve a measure of viability, although no FM station in Panama City is presently viable, and, as a result, would permit WPAP–FM to provide more and better programming to the people of Panama City.

6. We believe that these arguments are not sufficiently convincing to warrant the relief requested. There has been no showing for example, that DAE Broadcasting Company, which acquired Mr. Brannen's AM station, would not also purchase WPAP–FM, in which case the expense of moving the facilities would become unnecessary. Nor has it been shown that DAE Broadcasting Company would not permit someone other than Mr. Brannen to operate WPAP–FM in the present mode. The statement that Mr. Brannen's rights under the present contract are unassignable is not dispositive of that question. Nor is there any reason given why someone other than Mr. Brannen could not operate in the manner proposed by Mr. Brannen, i.e., from the channel 13 location, and therefore accomplish at least some of the economies which the petitioner claims would be made by Mr. Brannen's retaining ownership. Finally, no reason has been advanced as to why the objectives of the rule could not be achieved by the alternative to Mr. Brannen's selling the FM station, i.e., disposing of his interest in Panhandle. For all of these reasons, we must affirm our original decision.

Accordingly, the petition for partial reconsideration filed by Panhandle Broadcasting Co., Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-687

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
Request, for Issuance of Tax Certificate for Sale of Interest in Cable Television Systems Pursuant to Section 76.501(a)(2) of the Commission's Rules, by Plains Television Corp.
Re Cable Television Systems at Springfield, Grandview, Jerome, Leland Grove, and Southern View, Ill.
File No. CTAX-5

Memorandum Opinion and Order

(Adopted July 26, 1972; Released August 1, 1972)

By the Commission: Chairman Burch absent; Commissioner Hooks not participating

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules which, inter alia, prohibits cross-ownership, operation, control or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order, we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Cablevision Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

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[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of the chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers . . . . NOTE 2: The word 'interest' as used herein includes, in the case of corporations, common officers or directors and partial (as well as total) ownership interests represented by ownership of voting stock. NOTE 3: In applying the provisions of paragraph (a) of this section to the stockholders of a corporation which has more than 50 stockholders: (a) only those stockholders need be considered who are officers or directors or who directly or indirectly own 1 percent or more of the outstanding voting stock."

[2] Section 1071 of the 1954 Internal Revenue Code provides that: "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Corporation to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elected, be treated as an involuntary conversion of such property within the meaning of Section 1033."

2. Now before us is an application for a Section 1071 tax certificate, filed on May 9, 1972, by Plains Television Corporation ("Plains"), licensee of Television Station WICS, Springfield, Illinois, with respect to its March 5, 1972 sale, to Communications Properties, Inc. ("Communications"), of its option to purchase 50 percent of the outstanding shares of First Illinois Cable T.V., Inc. ("First Illinois"). First Illinois operates cable television systems at Springfield, Grandview, Jerome, Leland Grove, and Southern View, Illinois.

3. In support of its application, Plains states the following: (a) On May 23, 1967, Plains entered into a stock option agreement ("Transaction A") with the stockholders of First Illinois under which Plains obtained an option to purchase 50 percent of the outstanding shares of First Illinois. (b) On February 4, 1971, subsequent to the adoption of Section 76.501 of the Rules and pursuant to the divestiture requirements of that section, Plains (in "Transaction B") sold to Communications an option to purchase Plains' First Illinois option rights. (c) On March 5, 1972 (In "Transaction C") Communications, exercising its rights obtained under Transaction B, purchased Plains' First Illinois stock option rights. (d) Communications is a corporation with more than 50 stockholders, and its officers, directors, and stockholders with 1 percent or more of its outstanding voting stock hold no broadcast interests which conflict with the Commission's cable television cross-ownership rules insofar as they apply to Communications' purchase of an interest in First Illinois. (e) Through these transactions, Plains obtained and subsequently divested itself of interests in First Illinois cable television systems (located in the above-referenced communities) all wholly within the predicted Grade B contour of WICS(TV).

4. Paragraph (b) of Section 76.501 sets forth, as an example of a cable television system "interest" within the contemplation of that section, the possession of a municipal "franchise" to operate a cable system. Thus the issuance of a tax certificate would be appropriate where the licensee of a television broadcast station transferred to another its rights, under a municipal franchise, to construct and operate a cable system *not yet in existence* whose service area (once the system began operations) would be within the predicted Grade B contour of the station.[3] Similarly, the issuance of a tax certificate is appropriate where, as here, the licensee of a television broadcast station transfers to another the station licensee's indefeasible right to purchase 50 percent interest in *existing, operating* cable television systems within the predicted Grade B contour of the station.

5. The impact of Section 76.501 is that if a cable television system which has a cross-interest relationship with a local television broadcast station proposes to carry the signal of *any* television broadcast station (i.e., performs a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either the system or the station, in compliance with the requirements of new Section 76.501, is clearly "neces-

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[3] Assuming, of course, that the station licensee possessed both the station and the franchise on or before July 1, 1970, and disposed of its franchise rights on or after August 10, 1970, pursuant to the requirements of Section 76.501.

sary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television broadcast stations and cable television systems.

6. In view of the foregoing, including Plains' assertions of fact as set forth in paragraph 3 supra, we find that the sale by Plains Television Corporation of its above-described interest in the Springfield, Grandview, Jerome, Leland Grove, and Southern View, Illinois, cable television systems operated by First Illinois Cable T.V., Inc., was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of our Rules, with respect to the ownership and control of television stations and cable television systems.

Accordingly, IT IS ORDERED, That there BE ISSUED to Plains Television Corporation the tax certificate appended hereto, certifying that its sale of its interest in the above-referenced cable television systems was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Plains Television Corporation, the licensee of Television Broadcast Station WICS, Springfield, Illinois, has reported to the Commission that company's transfer, on March 5, 1972, of its interest in the cable television systems at Springfield, Grandview, Jerome, Leland Grove, and Southern View, Illinois, operated by First Illinois Cable T.V., Inc., to Communications Properties, Inc., to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross-ownership, operation, control, or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 26th day of July, 1972.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

F.C.C. 72-723

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUESTS FOR WAIVER OF THE "PRIME TIME ACCESS RULE" (SECTION 73.658(k)) IN CONNECTION WITH VARIOUS SPORTS EVENTS DURING AUGUST AND SEPTEMBER 1972 (REQUESTS OF NBC, CBS, AND STATION KTVK, PHOENIX, ARIZ.)

MEMORANDUM OPINION AND ORDER

(Adopted August 9, 1972; Released August 10, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE, ACTING CHAIRMAN; AND WILEY WITH H. REX LEE CONCURRING IN THE RESULT ACTING AS A BOARD.

1. The Commission here considers certain requests for waiver of the "prime time access rule", Section 73.658(k), in connection with certain sports events, filed by National Broadcasting Company, Inc. (NBC, request filed May 16, 1972, and part already acted on), Columbia Broadcasting System, Inc. (CBS, request filed July 25, 1972), and the licensee of Station KTVK, Phoenix, Arizona (ABC-affiliated, request filed July 20, 1972). This document covers those requests involving dates through September 10, 1972; the other requests in the three petitions will be dealt with later.

2. The various requests involve a total of 6 events, all of them evening professional football games except NBC's "World Series of Golf", scheduled for 5 to 6:30 p.m. E.T., Saturday and Sunday, September 9 and 10 respectively. The professional football games have been scheduled by the networks (ABC in the case of the Phoenix station) on the assumption that they will not run over three hours, which experience shows to be the usual case (data submitted by CBS and NBC for the 1971 season shows less than 10% incidence of pro football games running over three hours).[1] Waiver is requested only in the unlikely event that the games should run beyond three hours, or, in the case of the "World Series of Golf", that the matches would run more than a half-hour beyond the scheduled closing time of 6:30 p.m. E.T.

3. Of the five pro football events, all are evening games, including the following:

(1) Two on NBC, August 19 and 26, starting at 9 p.m. E.T.;

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[1] CBS asserts that during its 1971-72 professional football season, only 6 of 89 games ran over three hours, and only one of these was a 4 p.m. game involving a prime-time waiver situation. NBC asserts that of twenty-two 1971 pro games telecast starting at 4 p.m. E.T., only two ran over three hours.

(2) One on ABC, starting at 9 p.m. E.D.S.T., or 6 p.m. Mountain *Standard* time (observed in Phoenix), August 27;

(3) One on NBC Friday evening, September 1, starting at 8:30 p.m. E.T.; [2] and

(4) One on CBS, Sunday, September 10, starting at 6 p.m. E.T.

Certain points should be noted as to the evening events:

(a) The Phoenix request for waiver—which, as indicated, will not be necessary if the games do not exceed three hours—results solely from the fact that Phoenix does not observe daylight-saving time, so that the games start at 6 p.m. local time there, and all of the telecasts occur during prime time. KTVK states that it will broadcast no other network programming during prime time on these evenings.

(b) The CBS request for waiver in connection with its September 10 telecast does not pertain to the pro game as such since that begins at 6 p.m. E.T., and thus the contest itself would not occupy much over two hours of prime time. Rather, the waiver would be necessary, if at all, to accommodate a following one-hour program, the fifth in a "major cultural and informational series", concerning *Leonardo da Vinci*. This is scheduled to begin at 9 p.m. E.T., following the three-hour football game; if the game should run over three hours, or over two hours of prime time, waiver would be necessary to carry this program to its conclusion in the Eastern and Central time zones.

(c) NBC's two 9 p.m. football games do not present any possible problems in the Eastern and Central time zones, where more than 80% of the top 50 markets and their TV homes are located, since over-run beyond three hours would be well after prime time. The games themselves do not present any problem in the Pacific time zone, since they start at 6 p.m. P.T.; but waiver could be necessary for these stations to carry the following NBC program to completion (the one-hour NBC Comedy Hour). This program is carried *before* the game in the Eastern and Central zones, but afterward in the Pacific zone, in line with NBC's usual scheduling practice in these situations.

(d) NBC's September 1 pro football game, starting at 8:30 p.m. E.T., likewise presents no problem in the Eastern and Central zones, and no problem in the Pacific zone because it starts there at 5:30 and NBC presents no other network programming this evening.

4. As to stations in the Mountain time zone, the facts are not entirely clear as to NBC's contemplated evening scheduling on three dates in relation to the situations in the three markets involved (because of differences in local time and in what the stations in the various cities have designated this season as "prime time", the situation is different in each of the three markets). However, it appears from NBC's May 16 request, and a clarifying letter of August 1, that all it is seeking is waiver with respect to possible "over-run" of these football telecasts beyond three hours; and its request is considered here on that basis.

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[2] Under NBC's scheduling pattern for the 1971–72 year, with 3½ hours of programs on Sunday evenings, it makes up for this by cutting back to 2½ hours on Fridays. It will present no programs on Friday, September 1, except the football game, during prime time.

Conclusions

5. Upon consideration of the foregoing matters, we are of the view that, in general, the waivers should be granted as requested. As noted above, it appears that the scheduling of these pro football telecasts has been realistic, and that only in a very small percentage of cases would such events be likely to extend beyond the allotted time of three hours. As NBC and CBS point out, we have previously granted waivers on this basis, and the same appears to be appropriate here.[3] The same appears to be true in the case of NBC's golf telecasts, since they would impinge into prime time only if they run more than one half hour longer than the time which has been allotted.

6. As noted above, in some cases—as to CBS generally in one case, and as to NBC in the Pacific zone in two cases (and possibly the Mountain zone also)—waiver is necessary, if at all, not to permit the completion of the football game itself, but to accommodate the following one-hour program and permit it to be carried to completion. We are of the view that waiver is appropriate in these circumstances also, in view of the small chance that the football game will run over three hours and the scheduling difficulties which might otherwise arise. Also, as to the NBC situations, we have previously granted waivers to permit the presentation of "regular" programming, in addition to a special event, where the situation complies with the rule in the Eastern and Central zones but the total network programming would occupy more than three prime hours in the two Western zones.[4] We find that principle to be appropriate here also, especially since the chance that there will be any runover, even in these zones, is small.

7. In view of the foregoing, IT IS ORDERED, That:

(1) Stations affiliated with the National Broadcasting Company, Inc. (NBC television network MAY SCHEDULE AND PRESENT, on August 19, August 26 and September 1, 1972, NBC programming on the assumption that the telecast of a professional football game scheduled on each of those dates will not last over three hours (i.e., any excess over three hours will not be counted against time permissible under Section 73.658(k)); and stations affiliated with the Columbia Broadcasting System, Inc. (CBS) television network MAY SCHEDULE AND PRESENT, on September 10, 1972, CBS programming on the same assumption.

(2) Stations affiliated with the NBC television network MAY CARRY TO COMPLETION, on September 9 and 10, 1972, NBC golf coverage beginning at about 5 p.m. E.T., without any of the time counting against the time of network programs permissible under Section 73.658(k).

3. Station KTVK, Phoenix, Arizona, MAY CARRY TO COMPLETION ABC football broadcasts beginning at about 6 p.m. M.S.T. on August 27, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] See e.g. 32 FCC 2d 58 (FCC 71–1037, October 1971) and FCC 72–612, 24 R.R. 2d 918 (July 1972).

[4] See *National Broadcasting Company, Inc.*, 33 FCC 2d 743 (February 1972, the Academy Awards decision) and FCC 72–547, 24 R.R. 2d 852 (July 1972, the Democratic National Telethon Committee decision).

F.C.C. 72-624

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
INQUIRY INTO PROBLEMS OF PUBLIC COAST RADIOTELEGRAPH STATIONS } Docket No. 19544

NOTICE OF INQUIRY

(Adopted July 12, 1972; Released July 20, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. This inquiry is instituted under Section 403 of the Communications Act of 1934 to review problems relating to operations of public coast stations providing common carrier telegraph service between the mainland United States on the one hand, and ships at sea, on the Great Lakes, the St. Lawrence River, and aircraft, on the other. The problems set forth in greater detail below indicate that an overall review of coast station operations at this time may provide the basis for long-term policy decisions, which may be more in the public interest than would separate action only on matters relating to coast stations now pending before the Commission.

2. At present there are 18 radiotelegraph coast stations operated by three major telegraph carriers and five independents. Message telegraph service is provided by all stations, scheduled press transmission service and telex service are provided by one major carrier from two of the stations, and another major carrier provides a commercial news service and a radiophoto service. These 18 stations link points on land with ships and aircraft. The ships and aircraft with which they communicate have stations which are separately licensed, and the links between the coast station and points on land are provided by either The Western Union Telegraph Company or the carriers operating the coast stations.

3. Since May 15, 1963, at which time the Commission allowed RCA Global Communications, Inc. (RCA), as the bellwether carrier, increases in rates for coast station service and for landline handling,[1] the number of separate stations has been reduced by five.[2] Of the present 18 stations, six are licensed to ITT World Communications Inc. (ITT), five are licensed to RCA, and two are licensed to Tropical Radio Telegraph Company (TRT).[3] The remaining five coast stations are operated by independent licensees.

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[1] *Marine Telegraph Charges,* Docket No. 14851, 34 F.C.C. 929. Separate charges are made for coast station handling, landline handling, and ship handling of messages.

[2] At that time ITT was operating seven coast stations, RCA was operating eight stations, and TRT was operating two stations. In addition, there were six independent stations, two of which were operated by RCA under service agreements.

[3] All of these carriers also provide point-to-point telegraph and other services between the Mainland and overseas points.

4. At the present time, there are pending applications to close five of the above 18 stations. There are also pending applications for licenses to open two new stations, one for public service and one for limited service.[4] Table 1 gives detailed information regarding the location and licensees of the present and proposed stations, together with the file number of relevant applications to close or to construct new stations.

TABLE 1.—*Marine Radiotelegraph Public and Limited Coast Stations*

Area	Call	Location	Licensee or applicant*	Kind of application	File number
North Atlantic Coast.	WCC	Chatham, Mass	RCA		
	WSL	Amagansett, L.I., N.Y	ITT		
	WSF	New York, N.Y	ITT	Close	T-D-17509
	WSC	Tuckerton, N.J	RCA		
	WMH	Baltimore, Md	MPA	Close	P-D-216
South Atlantic Coast.	(**)	Savannah, Ga	Martin	Construct	939-M-L-80
	WOE	Lantana, Fla	RCA	Close	T-D-17603
	WAX	Hialeah, Fla	TRT		
Gulf Coast	WPD	Tampa, Fla	Wood		
	WLO	Mobile, Ala	MMR		
	WNU	New Orleans, La	TRT		
	(***)	Harvey, La	McDermott	Construct	990-M-L-61
	WPA	Port Arthur, Tex	RCA		
	KLC	Arcadia, Tex	ITT	Close	T-D-18395
Pacific Coast	KOK	Los Angeles, Calif	ITT		
	KFS	San Francisco, Calif	ITT	Close	T-D-18394
	KPH	San Francisco, Calif	RCA		
	KLB	Seattle, Wash	ITT		
Great Lakes	WLC	Rogers City, Mich	CRT		
	WBL	Buffalo, N.Y	GLM		

*RCA=RCA Global Communications, Inc.; ITT=ITT World Communications Inc.; MPA=Maryland Port Authority; Martin=Alpha Martin; Wood=Clara Lee Warner Wood; MMR=Mobile Marine Radio; TRT=Tropical Radio Telegraph Co.; McDermott=J. Ray McDermott & Co., Inc.; CRT=Central Radio Telegraph Co.; GLM=Great Lakes Marine Radio.

**No call sign has been assigned since the application for the station construction permit is pending.

***No call sign has been assigned since the application for the station construction permit is pending. This station is different from the others in that it is proposed to be limited rather than common carrier.

5. It is alleged that the stations proposed to be closed are either losing money or making only a marginal profit. ITT, which has proposed to close three of its six stations, has urged the Commission to give prompt attention to the serious economic problems associated with continued operation of its coast radiotelegraph stations. It asserts that the revenue from its stations in recent years has not been sufficient to support all of the facilities which are currently in service. It alleges a pretax loss in 1970 of $171,000 and a predicted pretax loss in 1974 of $776,000, and believes that the Commission should promptly grant applications to close the three stations, which it claims are redundant. RCA indicates, in support of its application to close its station at Lantana, Florida, that direct operating revenues were only slightly more than direct operating expenses, and that if overhead costs were attributed to the station, it would lose money. The Maryland Port Administration indicates that its station near Baltimore, Maryland, has been losing money for many years. TRT recently stated that

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[4] ITT seeks to close its stations at New York City; Arcadia, Texas; and San Francisco, California. RCA seeks to close its station at Lantana, Florida; and the Maryland Port Administration seeks to close its station at Baltimore, Maryland. Alpha Martin has applied to open a station at Savannah, Georgia, and J. Ray McDermott & Co., Inc. wants to open a limited coast station at Harvey, Louisiana.

its economic circumstances precluded it from taking action to insure maintenance of its operations, of which its two coast stations are a part.[5]

6. For the three major carriers (RCA, ITT and TRT), information available to the Commission indicates that as a group they operated at a loss for calendar year 1970, although RCA had a positive return. This was despite an industry increase in 1970 over 1963 (the date of the last rate increase) of 21.1% in messages handled, 49.2% in words handled, and 67.6% in gross revenues from marine operations. The figures in recent years for the three major carriers also show increases in messages, words and gross revenues. However, no data except that indicated above is available to show net revenues or profits either overall or by individual coast stations. In view of the number of closures in past years, the pending applications for closure, the lack of complete financial information, and the problems outlined below, it is appropriate at this time to consider an overall review of the financial situation of public coast radiotelegraph station operations.

7. Various filings before the Commission, including comments in connection with closure applications, have raised the question of the adequacy of the service of public coast telegraph stations. In particular, it is asserted that it is difficult to reach a station, or that the length of time necessary to make contact with the coast station and to transmit the message between the ship and the coast station is excessive. Comments in connection with the application for a limited coast station allege that new service desired is not available.[6]

8. The Commission recently adopted rule amendments in Docket No. 18577, which tightened the technical standards relating to frequency stability and spurious emissions applicable to coast radiotelegraph stations. Section 81.137(d) of the Commission's Rules was changed to require the use of type accepted transmitters by January 1, 1971; however, non-type accepted transmitters installed before that date could continue to be used until January 1, 1973. ITT states that compliance by their coast radiotelegraph stations with this rule amendment would require an expenditure of approximately 1.3 million dollars, and greatly increase revenue requirements without any benefit to the public. RCA asserts that, if it is required to comply, it would cost approximately one million dollars; that RCA will not be encouraged to remain in the maritime service; and that such compliance will necessitate a rate increase in an already financially overburdened service.

9. The aforementioned comments about the adequacy of current service may indicate a need to improve current operating procedures. In this connection there is a petition before the Commission, requesting that operating procedures be required (1) that would provide for each

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[5] This statement was made by TRT in connection with its application for transfer of control of TRT to RCA, *Tropical Radio Telegraph Co.*, Docket No. 19175, 28 F.C.C. 2d 95, 97 (1971). The application was subsequently dismissed with prejudice by Order released April 23, 1971.

[6] In addition, the American Institute of Merchant Shipping, a national association representing major operators of U.S. flag vessels engaged in domestic and foreign commerce of the United States, in opposing two closure applications, asserted that, since 1950, the substantial reduction in the number of coast stations operating in this industry has diminished or eliminated service competition in principal shipping areas.

coast station establishing, at the time contact with the ship is made, one frequency for receiving calls, and (2) that would provide for more frequent transmission of traffic lists.[7] It is contended that such procedures would reduce the amount of calling, and thus the congestion in the calling bands and delay in delivery of traffic. It is stated that after contact is made between the coast station and ship, most public coast stations inform the ship operator of several frequencies and bands to which the coast station operator may listen for the call, rather than only one. Thus, the ship operator must call a number of times on various frequencies in several bands to establish communications with the desired coast station, rather than calling once on a preestablished frequency. It is also suggested that traffic lists should be transmitted more frequently than every two hours to lessen queries as to whether there is traffic for the caller.

10. There may be an increasing demand for new services, such as data, in the near future. In this connection the application by J. Ray McDermott & Co., Inc. (McDermott) for a limited coast station, referred to above, indicates that the company desires to provide radioteletype transmission service to numerous ship stations which the company owns. McDermott states that such service is not available from common carrier coast radiotelegraph stations, and it proposes to establish a limited coast radiotelegraph station at Harvey, Louisiana to provide this service. At the present time, there are no outstanding radio station authorizations for limited coast radiotelegraph stations. Heretofore, the demand for radio telegraph service has been supplied by common carrier coast stations, except for service to government stations. Provision of the data service by McDermott on a regular basis would require that frequencies not now available under the Rules be provided, and would set a precedent for authorizing further limited coast station operations. Private telegraph operation would make for inefficient use of available radio frequencies, which are in relatively short supply, and would also eliminate a possible source of additional revenue to the existing public coast telegraph stations. Since limited coast telephone stations have taken traffic formerly handled by public telephone and telegraph coast stations, it appears likely that limited coast telegraph stations, if authorized, would also obtain traffic and revenue currently handled by public coast telegraph stations. Such a reduction in revenue would further impair the economic viability of public coast telegraph stations. Thus a determination should be made as to whether this service desired by McDermott or other desired services can be provided on a reasonable basis by common carriers.

11. It appears that the proportion of message telegraph traffic to total telegraph traffic will decrease, and that the proportion of traffic attributable to telex and data will increase. Likewise, there may be decreasing use of manual methods of transmission, and an increased use of telex and other machines for transmission purposes. It appears desirable in connection with the provision of telex and data services, including the kind proposed by McDermott, that the coast station be in a position to rapidly interconnect with the land communication point

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[7] **Petition of Steffan Sorenson, RM–1938.**

through some method such as Western Union message service, telex, TWX or leased lines. It appears desirable that the carriers take the necessary steps to properly provide for these changes.

12. The foregoing review indicates that there are economic, operational and technical problems in connection with the operation of the public coast radiotelegraph stations as a group. However, more information is needed to make an informed judgment about possible overall remedies, particularly with respect to the following general areas:

a. The nature and causes, including possible redundancy, of economic problems facing the public coast stations;

b. the adequacy of present services and methods of operations of public coast stations;

c. the equipment needed to be installed to provide adequate service and to meet the requirements of Docket No. 18577, including the amount of the investment and operating costs required;

d. possible new methods of operation to be employed by the public coast stations to provide improved service at a reasonable cost, and the services which should be provided to the public; and

e. the appropriate regulatory scheme for public coast telegraph stations, including alternatives, e.g., the possibility that the Commission should deregulate the service, permitting licensees to provide service as competition and the market for their services demand, with only minimum technical and safety requirements imposed, but specifically without detailed rate or entry regulation.

13. In view of the discussion above, and for the guidance of those concerned with this inquiry, Appendix A sets out the areas in which specific information and comments are sought from interested persons in addition to their responses in the general areas set forth in Paragraph 12 hereinbefore. Appendix B sets out a list of the carriers, users, unions and others who can provide information in response to this inquiry. Since this inquiry is instituted pursuant to Section 403 of the Communications Act, the licensees shown in Part I of Appendix B are hereby made parties respondent. Since RCA files reports on behalf of a number of the independents, we believe that it may be appropriate that RCA undertake that responsibility for such independents in this instance as well.

14. The carriers listed in Part I of Appendix B should answer the questions in Part I of Appendix A, and those questions that are relevant in Parts II and III of Appendix A. Persons involved in the transmission and reception of traffic between coast stations and ship stations and their representatives, including those persons listed in Part II of Appendix B, are requested to provide the information set forth in Part II of Appendix A. Users, including user associations set forth in Part III of Appendix B, should answer questions contained in Part III of Appendix A. Any person may, of course, address itself to relevant areas other than those on which comments are requested in reaching a determination, the Commission may take into consideration any other relevant information before it.

15. A copy of this Notice of Inquiry will be served on each person listed in the attached Appendix B. Comments should be filed within

90 days of the date of release of this order, and reply comments should be filed within 45 days thereafter. An original and four copies should be filed. Persons listed in the attached Appendix B who file should serve a copy of their comments and replies on each of the other parties listed in Appendix B at the address indicated.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX A

I. Licensees of public coast radiotelegraph stations listed in Part I of Appendix B, or persons filing on their behalf, should provide the following information.

A. For each coast station provide the following information.

1. Name and location of coast station involved, street address, and present hours of service. Describe the services being provided, including relevant details from the tariffs. Indicate the extent and nature of any local pickup and delivery facilities, including the number of messengers and description of any arrangements for transferring traffic to other carriers for local delivery or transmission to distant points.

2. Identification of land area served by the public coast station involved, including population and general character of marine interests served. For the most recent typical month for which statistics are available, the distribution, by service, of the traffic sent to and received from communities to which the carrier itself picks up and delivers, and similar information as to communities to which the carrier does not itself pick up and deliver. Indicate the amount of traffic by service handled within a radius of 25 miles, within a radius of 25 to 100 miles, and over a radius of 100 miles from the station. Show distribution of traffic within each area by communities served where such communities originate or terminate 5% or more of the traffic.

3. Description of geographical marine area served on each frequency band used at the station, and approximate range of distance in operating with marine mobile stations. For the most recent typical month for which statistics are available, the amount of traffic sent and received by type of service, and the distribution of such traffic, as specifically as possible, by the nearest latitude and longitude in degrees, of the marine mobile station at the time the communication occurred.

4. By service, for each of the years 1966 through 1971, the amount of traffic sent and the amount received, the associated revenues, the associated direct operating expenses allocated by components, the associated overhead by components, including depreciation related to equipment, and the basis for such allocations, and a forecast for 1972 and 1973 of the above items if present services were continued, and the basis for such estimates.

5. Show the investment in each station, as of December 31 in each of the years 1969, 1970 and 1971, including (1) the original cost and current market value of the land, and the original and depreciated cost separately for buildings, equipment, and other related items, allocated where appropriate by service, and the basis for the calculation of the depreciation expense for each category of plant, and (2) if applicable, other elements of investment, such as construction work in progress, materials, supplies, etc.

6. For the most recent typical month for which statistics are available, the distribution, separately, of inbound and outbound traffic, by service, separately as between number handled over the counter, by teleprinter, messenger, agent, telephone, TWX, transferred to or from another coast station of applicant transferred to or from another carrier, or other method.

7. For the most recent typical month for which statistics are available, by service, the average traffic sent and received per hour, each day for the hours during which the station is open, separately; and an estimate of the traffic per hour in a typical month that the station could send and receive, separately, if demand were present, and the basis for such estimates.

8. List of United States Coast Guard stations providing radiotelegraph safety and distress coverage in the marine area served by the coast station involved.

B. For each radiotelegraph station, describe in detail all equipment currently installed at the station and the relevant operating parameters of each piece of equipment, including a functional block diagram of the station. In particular, the following information should be included:

1. For each transmitter
    a. type, manufacturer, etc.
    b. maximum output power, and power at which normally operated
    c. frequency range
    d. emission types
    e. frequency selection mechanism and tolerance
    f. bandwidth selection mechanism
    g. out of band emission suppression
    h. date transmitter was placed in service.
2. For each receiver
    a. type, manufacturer, etc.
    b. frequency range
    c. frequency selection mechanism
    d. bandwidth selection mechanism
    e. sensitivity
    f. selectivity
    g. date receiver was placed in service.
3. For each antenna
    a. physical construction, i.e., type
    b. frequency range
    c. gain in each direction
    d. geographical coverage area
    e. date antenna was placed in service.

The functional block diagram should clearly indicate all capabilities of switching transmitters and receivers between antennas during normal operation, and should indicate which equipment, if any, is installed for redundancy or backup purposes. To the extent possible, indicate which equipment is used to provide each of the services provided by the coast station. Also, list all frequencies currently authorized at each station, whether they are calling or working frequencies, and the amount of usage of each frequency in relation to the other frequencies authorized at the station. To what degree is the usage of each of these frequencies determined by interference considerations or by the operating procedures employed at the station?

C. For each station, list as completely as possible, the new equipment and modifications required to bring the station into compliance with the technical standards established in Docket No. 18577, and the cost associated with each piece of equipment or modification as well as any other costs entailed.

D. For each radiotelegraph station

1. State the normal operating and watch shifts and the number of persons assigned to each shift and the general responsibilities of each person on the shift. Describe any departures, if any, from this pattern in the last three years and the reasons for those departures.

2. Indicate which of the transmitters and receivers are used by each operator on watch, preferably by referring to the functional block diagram requested in Question B above. Describe any changes in this pattern of equipment usage that occurs between shifts.

E. For each radiotelegraph station, provide a detailed description of all operating procedures performed in the provision of communications services by that station. Particular emphasis should be placed on the following procedural aspects:

1. In regard to inbound traffic

a. procedures used to determine if any ship stations have traffic for the coast station,

b. procedures used to acknowledge ship stations and indicate the frequency to be used for the actual transmission of the traffic to the coast station,

c. procedures used to scan frequencies and actually establish the communication link between the ship and coast station, and

d. procedures used to forward traffic to its final destination from the coast station after it has been received at the coast station.

2. In regard to outbound traffic
   a. procedures used to place messages at the coast station for transmission to ship stations,
   b. procedures used to inform a ship station that the coast station has traffic for it, in particular, the frequencies on which traffic lists are transmitted and the interval between transmissions of the traffic list,
   c. procedures typically used by ship stations to inform the coast station that the ship station is ready to receive traffic,
   d. procedures used to inform ship stations as to the frequency to be used for the actual transmission of the traffic to the ship stations, and
   e. procedures used to actually establish the communication link between coast and ship station.

Fully describe any changes in these procedures among different operators and different shifts.

F. In regard to the operating procedures listed in Question E above, provide information in regard to the amount of time normally required for the performance of each of these procedures. In particular, provide quantitative information, based on a study for a typical week of telegrams kept on file or other information, regarding the maximum, minimum, and average times required to perform the following steps during the specified study period:

1. Inbound traffic
   a. if available, the time between the first attempt by the ship's radio operator to establish contact with the coast station for the transmission of a message to the coast station and the reception of the message by the coast station operator, or, alternatively, the time between the filing of the message with the ship's radio operator and its reception at the coast station, and
   b. time between the reception of the message by a coast station operator and the time the message is transmitted over landline facilities to the local office which delivers the messages.
2. Outbound traffic
   a. time between the placement of the message at an office of the landline carrier and its reception at the coast station,
   b. time between the reception of the message at the coast station and its first transmission on a traffic list, and
   c. time between the placement of the message on traffic list and its transmission to a ship station.

Discuss any changes in operating procedures, equipment, or staffing levels that might be made to decrease amount of time required to perform any of these steps and to improve service quality, and the cost of each such change.

G. In regard to services to be provided by coast radiotelegraph stations in the foreseeable future:

1. Indicate the number of personnel involved in selling the services provided, and any attempts to expand sales of existing services or to sell new services.

2. Describe in detail any new record and data services that could be provided by public coast radiotelegraph stations and for the next five years the estimated charges, volume, revenues and expenses associated with these new services.

3. Describe in detail any new technology that can be utilized to advantage by public coast radiotelegraph stations and the estimated costs and savings of using these innovations.

4. With regard to Items 2 and 3, describe the changes in operating procedures that would be required to provide these services and to utilize new technology. Also, describe the effects of these new services and technology on costs and revenues.

II. The following information should be provided by employees at the various public coast radiotelegraph stations, persons involved in the transmission and reception of messages from and to ship stations, such as radio officers, and the unions of such employees and radio officers, which unions are listed in Part II of Appendix B. Any other persons may address themselves to the matters below.

A. Describe, in as much detail as possible, the procedures involved in handling traffic through the public coast radiotelegraph stations. In particular, discuss the following steps taken in

1. The transmission of traffic from mobile stations to the coast station:
   a. Contacting the coast station in order to inform the coast station that the ship station has traffic for it,
   b. determining the actual frequency on which the message will be transmitted to the coast station, and
   c. establishing the actual communication link for the transmission of the traffic from the ship to the coast station.
2. The transmission of traffic from the coast station:
   a. Determining whether a coast station has any traffic for the ship station, including how often the traffic list is transmitted,
   b. informing the coast station that the ship station is ready to receive the message,
   c. determining the actual frequency on which the message will be transmitted from the coast station, and
   d. establishing the actual communication link for the transmission of the traffic from the coast to the ship station.

B. In regard to the responses to Question A, provide any available data regarding the amount of time required to complete each step. In particular, provide any quantitative data available regarding the amount of time between the placing of a message with the ship's radio operator and its reception at the coast station, the amount of time required for traffic to be received at its final destination after transmission from the ship station, and the amount of time between the placement of a message at a coast station and its reception at the ship station.

C. Discuss in detail any changes that might be made in any of these procedures or any new equipment that might be installed at either coast stations or ship stations to improve the quality of service and reduce the total amount of time elapsing between the placing of a message and its final delivery.

D. Are the staffing levels at the coast stations adequate to handle current traffic loads? If not, explain how the operating personnel should be changed to handle this traffic load. Would an increase or decrease in personnel increase efficiency and reduce time to handle traffic or reduce costs? If so, explain how. If new data services were provided, what changes in personnel would be needed?

III. The following information should be provided to the extent possible by any user associations, including those listed in Part III of Appendix B, companies utilizing the services of the public coast stations, other users and radio officers on ships. Any other persons may address themselves to the following matters.

A. Discuss the quality of present service provided by public coast radiotelegraph stations, including accuracy and speed of service, and the reasonableness of rates currently charged for services. How might this service be improved?

B. How adequate are current procedures for communicating between coast station and ship? How could these procedures be improved, particularly in respect to reducing to a practical minimum the time required for a ship station to establish communications with a coast station? Should coast radiotelegraph stations establish a specific working frequency when acknowledging a ship station on the calling frequency? At what intervals should coast radiotelegraph stations transmit traffic lists?

C. Which public coast stations do you prefer to use and why? Does proximity of coast station to land point and/or ship of origination or destination of the message enter into the decision as to which coast station is chosen? If so, how? What relative effects do signal strength and quality, and ease of access have on choice of coast station? In what geographical location should public coast stations be located to assure adequate service at all times, including times when normal procedures are disrupted because of adverse propagation conditions, interference from other stations, and other conditions?

D. Describe any new type of record or data services desired together with estimated volumes and what you consider to be a reasonable cost for such services.

E. Discuss any new technology that may be applicable to the transmission of traffic from ship stations to coast radiotelegraph stations, particularly with respect to high-speed data services. Discuss the impact of these innovations on all aspects of operating procedures, quality of service, costs and charges.

APPENDIX B

Interested Parties for Purposes of Service

I. Licensees of Public Coast Radiotelegraph Stations
ITT World Communications, Inc.
67 Broad Street
New York, New York 10004
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004
Tropical Radio Telegraph Company
Prudential Center
Boston, Massachusetts 02199
Maryland Port Administration
Pier 2, Pratt Street
Baltimore, Maryland 21202
Clara Lee Warner Wood
3410 Obispo Street
Tampa, Florida 33609
Mobile Marine Radio, Inc.
P. O. Box 743
Mobile, Alabama 36601
Central Radio Telegraph Co.
% R. R. Wertz
600 Grant Street
Pittsburgh, Pennsylvania 15230
Great Lakes Marine Radio
P. O. Box 473
North Tonawanda, New York 14120
II. Employee and Radio Officer Interests
American Communications Association
One Park Row
New York, New York 10038
The Communications Workers of America
1925 K Street, N.W.
Washington, D.C. 20006
Southern Electronic Association
Attention: S. S. Pyle, President
P. O. Box 502
Lacombe, Louisiana, 70445
American Radio Association
270 Madison Avenue
New York, New York 10016
Mr. Steffan Sorenson
P. O. Box 2060
Norfolk, Virginia 23501
III. User Groups
American Institute of Merchant Shipping
Suite 930
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036
American Maritime Association
1612 K Street, N.W.
Washington, D.C. 20006
American Petroleum Institute
1801 K Street, N.W.
Washington, D.C. 20006

F.C.C. 72-110

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 76 OF THE COMMISSION'S RULES AND REGULATIONS TO GOVERN IMPORTATION OF RADIO SIGNALS BY CABLE TELEVISION SYSTEMS	Docket No. 19418 RM-1782

NOTICE OF PROPOSED RULE MAKING

(Adopted February 2, 1972; Released February 3, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it a "Petition for Institution of Rule Making Barring or Restricting Importation of Non-local Radio Station Signals by CATV Systems" (RM-1782), filed April 9, 1971, by the Rocky Mountain Broadcasters' Association. Statements in support of this petition were filed by the National Association of Broadcasters and by the National Association of Educational Broadcasters. An opposition was filed by the National Cable Television Association.

2. This petition requests that the Commission adopt rules regulating the carriage of radio signals by cable television systems. No specific rule was proposed. As previously indicated in our August 5, 1971 *Letter of Intent* to Congress (31 FCC 2d 115, 140 (1971)) we believe this is an area where further inquiry and action by the Commission is needed. It appears that some of the same concerns we have expressed in our regulation of television signal carriage may also be applicable to radio carriage. Thus, petitioners urge that carriage of nonlocal radio stations, particularly when local stations are not also carried, fragments the market of local stations, potentially impairing their ability to serve the public. The need for action in this area is also suggested by the "Consensus Agreement" that we included as Appendix D to our *Cable Television Report and Order* (FCC 72-108) adopted this day. That agreement suggests a rule so that:

> When a CATV system carries a signal from an AM or FM radio station licensed to a community beyond a 35 mile radius of the system, it must, on request carry the signals of all local AM or FM stations respectively.

3. These considerations have persuaded us to inaugurate a rulemaking in this matter. Additionally, we are this day taking actions that we anticipate will result in significant new cable television system construction that may involve radio signal carriage and we, therefore, believe it appropriate to adopt some interim measures to govern

the carriage of radio signals until this proceeding is completed. We believe the best way to proceed is through the certificating process (See *Cable Television Report and Order*, FCC 72-108, para. 110). Cable systems must disclose which radio signals will be carried in connection with the application for a certificate. (See Form 325 that accompanies the application.) In view of the substantial public interest questions involved and the difficulties inherent in attempting to remove or readjust the carriage of signals to which the public has become accustomed, we shall not, during the pendency of this proceeding, process applications for certificates which propose to bring distant* radio signals: (1) into cable communities having licensed radio stations with populations of less than 50,000 or (2) into any community unless all radio stations of the same type (AM or FM) licensed to the cable community are also carried.

4. During this proceeding, the Commission will be seeking comment on the following issues; the definition of the term "local signal" as applied to radio stations; the possibility of "grandfathering" radio signals presently imported by cable systems; and the question of whether a leapfrog policy is appropriate here as in the case of television signals. In addition, consideration will be given to the possibility of devising importation policies premised either on the size of the market involved, or on the type of signals imported (educational, AM or FM), as presently is done with the carriage of television signals. The rule suggested in the Consensus Agreement should provide an appropriate focus for those commenting, with one addition—that whenever a local signal is carried, all such signals of the same type must be carried.

5. The Commission invites all interested parties to file written comments on this rule making proceeding on or before March 16, 1972 and reply comments on or before April 6, 1972. In reaching its decision on this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice.

6. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

7. Authority for the proposed rule making is contained in Sections 2, 3, 4(i) and (j), 301, 303, 307, 308, and 309.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Commission's action in this matter is consistent with its handling of cable television. Under the guise of an "interim procedure," lasting only until we can issue permanent rules (which the staff admits will take at least a year), we will not permit cable systems in cities with populations less than 50,000 to carry radio stations that residents of the city can pick up over the air. This policy helps no one. Cable systems are denied access to additional programming, subscribing listeners are deprived of stations they could otherwise hear, local radio stations are still not required to be carried, and the FCC is made to look the fool.

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*For purposes of the interim procedures, we shall define a distant radio signal as one licensed to a community more than 75 miles from the cable community.

I agree that rulemaking, a general inquiry, into "cable radio" is called for. During the pendency of that proceeding, I would permit systems in cities under 50,000 to carry all radio signals that can be picked up over the air—regardless of their source—so long as they also carry all stations licensed to the community of the system.

This whole problem arose because a cable system that provides radio as well as television service in Jackson Hole, Wyoming, is allegedly refusing to carry a local Jackson radio station. The Rocky Mountain Broadcasters Association brought the problem to our attention. My proposal would at least resolve the Jackson Hole conflict without raising more problems than it solves. I do not believe the majority's action has either virtue.

F.C.C. 72-714

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
RCA GLOBAL COMMUNICATIONS, INC.
Proposed revisions to Tariff F.C.C. No. 58 for AVD Channels Between Guam and Thailand
Docket No. 19542

ORDER

(Adopted August 9, 1972; Released August 15, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE ACTING CHAIRMAN; H. REX LEE AND WILEY ACTING AS A BOARD.

1. Our Memorandum Opinion and Order of July 14, 1972, designating the above referenced matter for hearing did not specify the issues of the proceeding and designated the Common Carrier Bureau as a party to the proceeding and directed the Chief of the Bureau to prepare a Recommended Decision.

Accordingly, IT IS ORDERED, that without in anyway limiting the scope of the proceedings, it shall include inquiry into the following:

1. Whether the charges or practices for or in connection with this communications service are, or will be, just, reasonable, and lawful under Section 201(b) of the Act;
2. Whether the charges or practices in connection with this communications service give rise to any unjust or unreasonable discrimination, or make or give any undue or unreasonable preference or advantage to any particular customer, or any undue or unreasonable prejudice or disadvantage under Section 202(a) of the Act; and,
3. Whether the Commission should prescribe just and reasonable charges or practices to be followed with respect to the service under investigation; and, if so, what charges or practices should be prescribed.

IT IS FURTHER ORDERED, that the Common Carrier Bureau is hereby removed as a party to this proceeding.[1]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] Although the Common Carrier Bureau will continue as a participant in the proceeding, it is inappropriate to designate it as a "party" to the proceeding when the chief of the Bureau has been instructed to prepare a recommended decision. *In re AT&T*, Docket No. 16258, 14 F.C.C. 2d 568, 569 at para. 4 (1968).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
COMMITTEE FOR THE RE-ELECTION OF THE PRESIDENT
For Declaratory Ruling Concerning Section 315(b)(1)

AUGUST 15, 1972.

MR. GLENN J. SEDAM, JR.,
General Counsel,
Committee for the Re-election of the President,
1701 Pennsylvania Avenue NW.,
Washington, D.C. 20006

DEAR MR. SEDAM: This is in reply to your letter of August 9, 1972. You state that Section 315(b)(1) of the Communications Act of 1934, as amended by the Federal Election Campaign Act of 1971 (PL 92-225), states that the lowest unit charge is to be in effect "during the sixty days preceding the date of a general election," and you ask whether election day itself is included in such time period.

The legislative history of PL 92-225 is silent on the applicability of the lowest unit charge to election day. However, it is clear that it was the intent of Congress to make such charge available to candidates within a period proximate to election day. Therefore, the reasonable interpretation of the statute is to include election day within the specified period, and we believe that where licensees sell time to candidates on election day, the lowest unit charge would be applicable on that day.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

ARTHUR L. GINSBURG, *Acting Chief,*
Complaints and Compliance Division,
(For Chief, Broadcast Bureau).

F.C.C. 72-711

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ATLANTA NAACP, ATLANTA, GA.
Concerning Section 315 Political Broadcast by J. B. Stoner

AUGUST 3, 1972.

MR. LONNIE KING,
Atlanta NAACP,
859½ Hunter Street,
Atlanta, Ga. 30314

DEAR MR. KING: This will refer to your letter of August 2, 1972, which was also signed by Reverend Joe Boone, Community Coalition on Broadcasting, and Mr. Stuart Lowengrub, Anti-Defamation League, concerning the broadcast of a political announcement by Mr. J. B. Stoner, one of 17 candidates entered in the Democratic primary for U.S. Senator from Georgia. You request that the Commission "(1) recognize that when a broadcast licensee has in hand strong evidence to the effect that broadcasting of specific political advertisements with racial slurs contained therein poses an imminent and immediate threat to the safety and security of the public it serves, such licensee should be free to, and it is the responsibility of such licensee under the public interest standard to, withhold such announcement or advertisement, pending further review by an authorized body, without incurring either sanction or penalty of this Commission; and (2) . . . make known to its licensees in the State of Georgia that application of the foregoing standard, or any other reasonable standard the Commission may choose to employ, subject to fuller briefing and argument, means that no penalty or sanction will be applied to said licensees for refusing to telecast or broadcast the aforementioned advertisement of J. B. Stoner."

You state that the primary election is to be held on August 8, 1972; and that Mr. Stoner, "Chairman of the neo-Nazi National States Rights Party, is a white supremacist candidate . . . whose often stated goal is to rid the U.S. of all Blacks and Jews . . ."; that he is purchasing radio and television advertising time in several Georgia communities; that while under normal circumstances the broadcast licensee is prohibited by Section 315 of the Communications Act from exercising any censorship over the nature or substance of a candidate's presentation, the substance of one of Mr. Stoner's recently broadcast political announcements is such that it poses a serious and imminent threat to the safety and well being of the stations which air it and to the community at large; that the telecast of the advertisement has already resulted in threats of bombing and violence against broadcasting stations in Augusta (WRDW-TV) and Savannah (WTOC-TV), Georgia; and that Mr. Stoner intends to have the advertisement telecast and broadcast in Atlanta as well as in several other Georgia communities. You further state that in your judgment the continued broadcasting of the advertisement will pose a very serious threat to the welfare of your city and state and to the safety of both its black and white citizens; that "the clear and intended effect of this advertisement is to incite racial hatred and violence, to exacerbate fears, and to reverse the tide of understanding and progress between the races by provoking the ugly image of violence and terror"; that there are extremists who would welcome a violent confrontation and that Mr. Stoner's advertisement provides the kind of fuel that can ignite such a fire; that you recognize that the purpose of the no-censorship clause of Section 315 of the Communications Act is to protect the right of political candidates to engage in open and free discussion of the issues and to insure that the public will be allowed to hear all divergent points of view of such candidates without interference or influence by the broadcast licensees; and that while you heartily endorse the concept of non-censorship as well as the constitutional right of freedom of speech, even the latter has certain limitations such as the prohibition of yelling fire in a crowded theatre and that Mr. Stoner is yelling fire in the crowded theatre. Attached to your letter was a copy of an Executive Order issued by Mayor Sam Massell of Atlanta which urges radio and television stations and other mass media not to accept advertising using language such as that in Mr. Stoner's advertisements on the ground that it is "calculated to incite hearers of such language to take violent action. . . ." You state that the political announcement in question is as follows:

> I am J. B. Stoner. I am the only candidate for U.S. Senator who is for the white people. I am the only candidate who is against integration. All of the other candidates are race mixers to one degree or another. I say we must repeal Gambrell's civil rights law. Gambrell's law takes jobs from us whites and gives those jobs to the niggers. The main reason why niggers want integration is because the niggers want our white women. I am for law and order with the knowledge that you cannot have law and order and niggers too. Vote white. This time vote your convictions by voting white racist J. B. Stoner into the run-off election for U.S. Senator. Thank you.

The basic question here is whether the Commission should advise the affected licensees that they may refuse to carry the Stoner announcements. As you recognize, Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. 315, prohibits licensee censorship of broadcasts by legally qualified candidates for public office. It states in pertinent part that a "licensee shall have no power of censorship over the material broadcast under the provisions of this section." In addition, Section 326 of the Act, 47 U.S.C., 326, prohibits the Commission from censoring broadcast matter or interfering with the right of free speech by means of radio communication. The Supreme Court in *Farmers*

Union v. *WDAY*, 360 U.S. 525, has held that in view of the no-censorship provision of Section 315, licensees are immune to suit for defamatory statements contained in candidates' broadcasts, and has pointed out that permitting censorship for libel would "undermine the basic purpose for which Section 315 was passed—full and unrestricted discussion of political issues by legally qualified candidates." (360 U.S. at 529).

The relief requested in your letter would amount to an advance approval by the Commission of licensee censorship of a candidate's remarks. By way of background, we note that Constitutional guarantees do not permit the proscription of even the advocacy of force or of law violation "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg* v. *Ohio*, 395 U.S. 444, 447. And a prior restraint bears a heavy presumption against its constitutional validity. *Carroll* v. *Princess Anne*, 393 U.S. 175, 181. While there may be situations where speech is "so interlaced with burgeoning violence that it is not protected," *Carroll* v. *Princess Anne*, 393 U.S. at 180, and while a similar approach might warrant overriding the no-censorship command of Section 315, we need not resolve that difficult issue here, for we conclude on the basis of the information before us that there is no factual basis for the relief you request. Despite your report of threats of bombing and violence,[1] there does not appear to be that clear and present danger of imminent violence which might warrant interfering with speech which does not contain any direct incitement to violence. A contrary conclusion here would permit anyone to prevent a candidate from exercising his rights under Section 315 by threatening a violent reaction. In view of the precise commands of Sections 315 and 326, we are constrained to deny your requests.

However abhorent some speech might be to the Commission, we deem it best to adhere to what we stated in another context in *Anti-Defamation League of B'nai B'rith*, 4 F.C.C. 2d 190, 191 (1966), affirmed, *Anti-Defamation League of B'nai B'rith* v. *F.C.C.*, 131 U.S. App. D.C. 146, 403 F. 2d 169, (1968), cert. den. 394 U.S. 930 (1969):

> It is the judgment of the Commission, as it has been the judgment of those who drafted our Constitution and of the overwhelming majority of our legislators and judges over the years, that the public interest is best served by permitting the expression of any views that do not involve "a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Terminiello* v. *Chicago*, 337 US 1, 4 (1949); *Chaplinsky* v. *New Hampshire*, 315 US 568; *Ashton* v. *Kentucky* [384 US 195], 34 LW 4398 (1966). This most assuredly does not mean that those who uphold this principle approve of the opinions that are expressed under its protection. On the contrary, this principle insures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those

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[1] **We note in this connection that a member of the Commission's staff spoke by telephone to the station managers of Stations WRDW–TV and WTOC–TV, and they both denied having received any threats of bombing or violence.**

> officials who thus protect the rights of others to free speech. If there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable or congenial.

Accordingly, your request IS DENIED.

Commissioners Robert E. Lee, Acting Chairman; H. Rex Lee and Wiley acting as a Board.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-664

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHLAND, INC., LAUREL, MISS.	Docket No. 19415 File No. BPH-7405
SOUTH JONES BROADCASTERS, INC., ELLISVILLE, MISS.	Docket No. 19416 File No. BPH-7445
MICHAEL D. HAAS, BAY SAINT LOUIS, MISS.	Docket No. 19465 File No. BP-18154
ROBERT BARBER, JR., GEORGE SLIMAN, AND F. M. SMITH, D./B./A. GULF BROADCASTING CO., GULFPORT, MISS.	Docket No. 19466 File No. BP-18462
HWH CORP., MCCOMB, MISS. For Construction Permits	Docket No. 19467 File No. BP-18478

MEMORANDUM OPINION AND ORDER

(Adopted July 26, 1972; Released July 31, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. Under consideration are: (a) a request for conditional grant, pursuant to Section 1.592(a)(2) and (4) of the Commission's Rules, filed April 28, 1972, by South Jones Broadcasters, Inc. (South Jones); (b) a response, filed May 3, 1972, by Southland Inc. (Southland); and (c) an opposition, filed May 23, 1972, by the Chief, Broadcast Bureau.

2. South Jones requests,[1] pursuant to Section 1.592(a)(2) and (4) of the Commission's Rules,[2] that its application for a construction permit for a new FM station at Ellisville, Mississippi, be granted conditionally. Because it appeared that South Jones might be made a party to a consolidated proceeding involving other applications, South Jones argued initially that action upon its application might be delayed

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[1] South Jones' pleading, which was directed to the Hearing Examiner, was certified by the Examiner to the Commission for its consideration by order, FCC 72M-595, released May 5, 1972.

[2] Section 1.592(a)(2) and (4) provide:

"(a) Where a grant of an application would preclude the grant of any application or applications mutually exclusive with it, the Commission may, if the public interest will be served thereby, make a conditional grant of one of the applications and designate all of the mutually exclusive applications for hearing. Such conditional grant will be made upon the express condition that such grant is subject to being withdrawn if, at the hearing, it is shown that public interest will be better served by a grant of one of the other applications. Such conditional grants will be issued only where it appears:

* * * * * * *

"(2) That public interest requires the prompt establishment of broadcast service in a particular community or area; or

* * * * * * *

"(4) That a grant of one application would be in the public interest, and that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or the provisions of this chapter."

as a consequence.[3] In addition, South Jones argues that Ellisville has no local broadcast facility to serve the community on a day and night basis in this year of congressional and presidential elections, and that currently there is insufficient coverage of local activities including sporting events of the junior and senior high schools and a junior college located in Ellisville. For these reasons, South Jones submits that a conditional grant of its application would serve the public interest.

3. The request is opposed by Southland and the Chief, Broadcast Bureau. The request will be denied inasmuch as South Jones has not made such a compelling showing of need as would warrant granting the extraordinary relief requested. As we have stated heretofore, a grant of temporary operating authority (which is the kind of conditional grant here sought) to one of two competing applicants for permanent authority may cause serious prejudice to the remaining applicant, and, as here, absent a compelling showing we are not inclined to make such a grant. See, e.g., *Clifton Forge Radio*, FCC 72–351, 24 RR 2d 212 (1972). Moreover, yet to be resolved in this proceeding are the financial qualifications of the South Jones applicant.

4. Accordingly, the request for conditional grant pursuant to Section 1.592(a)(2) and (4) of the Commission Rules filed April 28, 1972, by South Jones Broadcasters, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[3] By order (FCC 72–491, released June 9, 1972) the Commission consolidated the proceeding in Docket Nos. 19415–19416 with the proceeding in Docket Nos. 19465–19467 for the limited purpose therein noted.

F.C.C. 72-109

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 76 OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO CABLE TELEVISION SYSTEMS AND THE CARRIAGE OF SPORTS PROGRAMS ON CABLE TELEVISION SYSTEMS	Docket No. 19417
Petition for Rule Making AMENDMENT TO SECTION 76 OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO CABLE TELEVISION SYSTEMS FILED BY CHANNEL 6, INC., LICENSEE OF TELEVISION BROADCAST STATION KCEN-TV, TEMPLE-WACO, TEX.	RM No. 1836

NOTICE OF PROPOSED RULE MAKING

(Adopted February 2, 1972; Released February 3, 1972)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

NATURE AND SCOPE OF THIS PROCEEDING

2. The Commission is today embarking on a new regulatory program for cable television. *See Cable Television Report and Order* (FCC 72-108), and Letter of August 5, 1971, 31 FCC 2d 115 (1971). In the Letter we discussed several aspects of sports programming including the relationship of Public Law 87-331, Title 15, U.S.C. §§ 1291-93 to cable television. This is a complex area involving the effect of telecasting on gate receipts of sports teams and their ability to survive or thrive. Consequently, we welcome Congressional guidance. But in the interim or if Congress chooses not to legislate in this area, we believe that we should institute this proceeding in accordance with the representations made in our Letter so that established Congressional policy will be implemented "before the significant emergence of new systems under [our] new rules."

PUBLIC LAW 87-331

3. Comments received in our rule making proceedings in Dockets 18397, 15 F.C.C. 2d 417 (1968) and 18397-A, 24 F.C.C. 2d 580 (1970), indicated that sports interests would generally have us ban the car-

riage on cable of professional sports events not broadcast by local market stations. The other extreme, of course, is to allow the carriage of whatever sports events appear on the stations that cable systems are permitted to carry under our rules. The middle ground is Public Law 87–331 and we believe that where Congress has already acted we can and should initiate rules for cable television.

4. The legislative process culminating in Public Law 87–331 was precipitated by the emergence of the American Football League and two cases of the same name: *United States* v. *National Football League* 116 F. Supp. 319 (E.D. Pa. 1953) and 196 F. Supp. 445 (E.D. Pa. 1971) (*construing final judgment of cited 1953 case*). A synopsis of these cases aids in understanding some of the basic issues involved in the subject proceeding.

5. Prior to 1953, the bylaws of the National Football League prohibited member teams from telecasting their games into an area of 75 miles radius of another team's city—without the consent of such other team [1]—on the day that such other team was playing at home or was playing away from home and causing its game to be televised by a station within 75 miles of its home city.[2] For example, if the Cleveland Browns were playing at home or if they were playing away from home and selling the right to the game to a station within 75 miles of Cleveland, no other team could sell television rights to their game within 75 miles of Cleveland.

6. In his 1953 decision Judge Grim held that the provision of the National Football League's bylaws that prohibited the telecasting of other games into the home territory of a team that was playing at home was a reasonable method of protecting attendance at games and not violative of the antitrust laws. However, when the home team was playing away there was no gate to protect, consequently the restriction on telecasting other games into the home territory of a club, not playing at home, was an unreasonable restraint on trade.[3] In 1961, the National Football League sought a construction of the final judgment entered in the 1953 case to determine the validity of a contract entered into by the League and the Columbia Broadcasting System. The contract gave CBS the exclusive right to telecast regular season games of the League with the proceeds from the sale to CBS to be distributed equally among the League teams. The contract represented a departure from the previous practice of League members of individually negotiating and selling television rights. The court found that this pooling arrangement eliminated competition among the League teams in a manner inconsistent with the 1953 decision and barred the enforcement of the contract. The 1961 decision, however, did not run against the American Football League which had sold a similar package to ABC in 1960 and 1961. Legislation was sought to remedy this alleged inequity and the result was Public Law 87–331.

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[1] The Court found that it is the general policy of the clubs to withhold such consent. *United States* v. *National Football League*, 116 F. Supp. 319 at 321.

[2] Certain exceptions to the 75 mile rule existed; e.g., when league cities were within 100 miles of each other. *Id.*

[3] The Court also found illegal all territorial restrictions on the sale of radio broadcasting rights and the exercise by the Commissioner of the National Football League of powers granted to him under the League's bylaws to disapprove television contracts because such power could effectuate illegal trade practices. *Id.* at 330.

7. *Proposed Rule.* Public Law 87–331 is divided into three sections. The first, in relevant part, provides an exemption from the antitrust laws for professional football, basketball, baseball and hockey so that "packaged" or "pooled" television rights may be sold by the League for games of the member clubs.[4] The second section provides for television blackout of games in the home territory of a team when it is playing at home. The third section effectively ensures that the professional football teams will not play, or cause their games to be telecast into areas where collegiate football is being played, on Friday nights or Saturdays. While we propose no rule, we specifically request comment on whether regulation is needed to carry out the purposes of Sections 1 and 3.

Section 2 of Public Law 87–331 (Section 1292 of Title 15 U.S.C.) states:

> Section 1291 of this title [exempting joint agreements to sell television rights to sports events] shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

8. The legislative history of Public Law 87–331 indicates that Section 2 of the Act was included for the purpose of maintaining, when joint agreements for pooled television rights were sold, so much of the restriction on the televising of sports events as the Court believed was not anticompetitive in *United States v. National Football League*, 116 F. Supp. 319 *supra*—blackouts when the home team was playing at home. *See* 107 Cong. Rec. 18852 (daily ed. Sept. 30, 1961) (remarks of Congressman Rogers and of Congressman Celler); and H.R. Rep. No. 1178, 87th Cong., 1st Sess. 5 (1961).

9. We believe that the following proposed rule will accomplish the above described intention vis-à-vis cable television carriage of sports events:

> When a professional baseball, basketball, football, or hockey team is playing at home, no cable television system located within the predicted Grade B contour[5] of a station located within the home city of the team shall, without the consent of the home team and its league, carry the television broadcast of a professional game of the same sport if such event is not available on a television station that:
>
> (a) Is located within 35 miles of the reference point of the community of the system or
>
> (b) Has an audience in the county or community of the system meeting the significant viewing test set forth in Section 76.54 of the Commission's Rules and Regulations.

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[4] The first section of Public Law 87–331 was amended in 1966 to provide immunity from the antitrust laws so that the American and National Football Leagues could merge.

[5] We also invite comments on whether we should parallel our signal carriage rules by establishing a fixed mileage zone of 35 miles.

While Public Law 87–331 provides for blackouts when there are pooled or package arrangements, it does not specifically provide for restricting telecasts—either by broadcast or by cable—of sports events in "home territories" of teams when the team is playing at home and pooling is not involved. Because Congressional policy does appear to focus on the protection of gate receipts for home games, our proposed rule does not distinguish between sports teams that pool their rights and those that do not. This is, of course, an appropriate area for comments—specifically, whether cable systems should be permitted to carry sports events in "home territories" when a team is playing at home and when there is no pooling agreement.

10. From the guidance of the legislative history, we believe that the most effective manner of preserving blackouts, vis-à-vis cable television systems, is to fashion such protection along the line of the actual usage of the sports blackout by the teams employing it.[6] If a sports event is to be blacked out in a certain area, the event will not be sold to any station located in the area which is desired to be blacked out. We believe, then, that the Grade B contour of stations located in the home city of the team in question represents the area in which cable systems must comply with the blackout. By stations located in the home city we mean those licensed to the city itself or nearby communities that serve the home city. The home city of a team that plays in more than one city, e.g., the Virginia Squires or North Carolina Cougars, would be the home city in which the team is playing on a particular day. Because different leagues recognized varying distances for "home territories," we seek comments on whether cable systems not located within the Grade B contours of stations in a team's home city but within their "home territory" (where a broadcast station might be subject to a blackout) should fall within our proposed rule and whether a fixed mileage zone would be preferable to the proposal for Grade B contours. We also request comments on whether there should be different criteria for carriage of the home games as against the games of some other team. With respect to television broadcast stations not located in the home city (or within the "home territory") of a professional team, we do not believe that distant sports programming should be blacked out on cable systems located within the Grade B contours because such blackout would not conform to the purpose of the blackout rule—protecting attendance at games. Finally, we contemplate that cable television systems would, in any case, be permitted to carry sports events on local stations or on those significantly viewed. Since these games are viewable off the air in the community of the system, this reflects the practice of the team or leagues involved.

11. Channel 6, Inc., licensee of Television Broadcast Station KCEN–TV, Temple-Waco, Texas, has filed a petition for rule making, R.M. No. 1836,[7] proposing the following rule:

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[6] H.R. Rep. 1178, 87th Cong., 1st Sess. 5 (1961) states:

"The term 'home territory' is not susceptible of a single definition that will be suitable for all professional football, baseball, basketball, and hockey leagues. By 'home territory' the committee means such home territory as is recognized by a particular league's bylaws or custom and usage."

[7] Channel 7, Inc., licensee of Television Broadcast Station KLTV, Tyler, Texas, filed a petition for rule making requesting the adoption of a rule identical to the one requested by Channel 6. The disposition of the Channel 6 matter, through incorporation into this proceeding, should also satisfy the request of Channel 7.

> Whenever carriage of a sporting event is "blacked-out" to a television broadcast station either by the promoters of the event or by the network with which the station is affiliated, such sporting event shall not be carried by any CATV system operating in the whole or in part within the predicted Grade B contour of said "blacked-out" station.

We are incorporating Channel 6's petition into this proceeding. Parties are, of course, free to comment on the proposed rule set forth immediately above and may introduce other solutions thought to be appropriate.

OTHER ISSUES

12. Aside from Public Law 87–331, a number of other questions have been raised (e.g., the effect of cable operations on minor league baseball; see comments of the Commissioner of Baseball in Docket 18397–A). Most importantly, the argument is made, particularly by representatives of the baseball, hockey and basketball leagues, that unrestricted importation on distant signals of games of the same sport will undermine the ability of sports teams to obtain substantial revenues from the sale of packages of games (both home and away). We seek comments on these matters and as to the appropriateness of adopting rules for other sports events, e.g., golf, automobile races, college sports, etc. and on both the legal and policy aspects of any suggested action.

13. Because any action should be taken before significant numbers of new cable operations have commenced, we intend to complete this rule making proceeding expeditiously. Parties are therefore put on notice that requests for extension of time to file must be accompanied by a very strong showing of unusual circumstances—and not a recitation that the matter is an important, complex one or that it takes time for the group or association to canvass its members. Such matters have already been taken into account—along with a need to bring this proceeding to a speedy close—in fixing the filing date.

14. Authority for the proposed rule making instituted herein is contained in Sections 2, 3, 4(i), (j) and (k), 301, 303, 307, 308 of the Communications Act.

15. All interested persons are invited to file written comments on the rule making proposals on or before March 16, 1972 and reply comments on or before April 6, 1972. In reaching this decision on this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice.

16. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs or other documents filed in this proceeding shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-677

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application by TIME-LIFE BROADCAST, INC., ASSIGNOR AND KELLY BROADCASTING, INC., ASSIGNEE For Assignment of License of Station KFSD-FM, San Diego, Calif.	BALH-1571 and BASCA-464

JULY 26, 1972.

TIME-LIFE BROADCAST, INC.,
Time-Life Building,
Rockefeller Center,
New York, N.Y. 10020

KELLY BROADCASTING, INC.
130 10th Street,
Sacramento, Calif. 95814

GENTLEMEN: This refers to the application for voluntary assignment of the license of Station KFSD-FM (formerly KOGO-AM), San Diego, California, from Time-Life Broadcast, Inc. to Kelly Broadcasting Company (BALH-1571 and BASCA-464). As you know, a Petition to Deny the application has been filed by the San Diego Chapter of the National Business League ("NBL"). As you may further know, informal objections to the application specifically directed to the Assignee's proposed programming have been filed by approximately 600 listeners in KFSD-FM's service area.

Petitioners charge that Kelly's proposed operation of the station "contravenes the public interest in that Kelly has without justification:

> (1) Proposed substantial curtailment of program services to its listening audience and
>
> (2) Proposed to abandon (KFSD-FM's) classical music format and thereby delete San Diego's only full-time classical music station."

The Commission has carefully considered the application, the petition to deny, and the responsive pleadings thereto, and the informal objections from the listening public in light of the Court of Appeals holding in *Citizens Committee v. FCC*, 436 F. 2d 263 (D.C. Cir.); 20 RR 2d 2026 (1970). On the basis of such consideration, we have concluded that the serious public questions raised by the Petition to Deny cannot be resolved without a hearing.

Before designating this application for hearing, you are requested to inform the Commission within twenty (20) days whether you wish to prosecute the application through the hearing process.

Chairman Burch was absent; Commissioner Hooks not participating.

By Direction of the Commission,
Ben F. Waple, *Secretary*.

F.C.C. 72-715

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
TROPICAL RADIO TELEGRAPH CO.
Authorization To Acquire and Operate One Satellite Voice Circuit for the Rendition of Record Services Between the United States and Italy and Beyond
File No. T-C-2335-1

MEMORANDUM OPINION AND ORDER

(Adopted August 9, 1972; Released August 11, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, ACTING CHAIRMAN; H. REX LEE AND WILEY ACTING AS A BOARD.

1. The Commission has before it for consideration (1) a telegraphic petition filed by ITT World Communications Inc. (ITT) on July 26, 1972, requesting a stay of the effectiveness of its Memorandum Opinion, Order, Authorization, and Certificate (Authorization) released July 19, 1972 (FCC 72-626), authorizing Tropical Radio Telegraph Co. (Tropical) to acquire and operate one satellite voice circuit for the rendition of record services between the United States and Italy and beyond; (2) a response to the ITT petition filed on August 1, 1972, by Tropical; and (3) a letter supporting the ITT petition filed on Aug. 1, 1972 by RCA.

2. In its petition, ITT also seeks the denial, revocation, or stay of an action of the Chief, Common Carrier Bureau, granting Tropical special permission (No. 6580) to file, on less than statutory notice, tariffs implementing the service authorized (a filing which Tropical accomplished on July 26, 1972). ITT argues that a stay of these actions is required in order to protect its right to file a Petition for Reconsideration of the Authorization cited above and to "preclude precipitous action with respect to the implementation of service to the public. (sic) before the substantial issues involved are appropriately resolved."

3. Upon careful consideration of ITT's request, we will deny the stay. Both the courts and this Commission have made it abundantly clear that a stay of an administrative action is not an automatic right. It is extraordinary relief and will be granted only where the movant can demonstrate all of the following: (1) that its rights would be irreparably injured in the absence of a stay; (2) that the movant has a substantial likelihood of success on the merits in its attempt to reverse the order sought to be stayed; (3) the absence of substantial injury to any other interested party; (4) that the public interest would not be injured by a grant of the requested stay. See *Virginia Petroleum Jobbers Assn.* v. *F.P.C.*, 259 F. 2d 921 (D.C. Cir. 1958); *California Water*

and Telephone Co. et al., 23 F.C.C. 2d 157, 158 (1970); *West Michigan Telecasters, Inc.*, 33 F.C.C. 2d 429 (1972).

4. It appears to us that ITT's petition has not demonstrated satisfaction of any of these prerequisites, nor even attempted to do so. ITT currently operates 117 circuits to Europe, and it seems highly unlikely to us that the grant of one circuit to Tropical could irreparably injure ITT during the pendency of a Petition for Reconsideration. Furthermore, ITT has not alleged any facts which would indicate the likelihood of prevailing on the merits in a Petition for Reconsideration. Thirdly, the stay of Tropical's authorization would delay Tropical's commencement of European service and would solidify further the market position of Tropical's competitors and their arrangements with foreign correspondents. Finally, our determination to grant Tropical one circuit to Italy was based on a finding that the public interest would be served by the introduction of a fourth competitive carrier on that route. To stay that grant during the pendency of a Petition for Reconsideration, which is not even before this Commission at this time, would, in our view, injure the public by forestalling the entry into competition by such a carrier until the completion of a possibly lengthy review and appeal procedure.

5. The action taken by the Chief, Common Carrier Bureau, regarding the special tariff permission was within the discretionary powers delegated to him by the Commission. See Section 0.297 of the Commission's Rules and Regulations. ITT alleges that the action taken with regard to the special permission was arbitrary and capricious because the undue haste in the disposition of the request did not give interested parties fair opportunity to comment. But Section 61.152 of the Rules requires a consideration only of the facts and circumstances set forth in the application for special permission. In view of the fact that we had recently determined that such new service would serve the public interest and in the absence of any compelling reasons to delay implementation of the service, we see no abuse of discretion in the staff's determination to grant special permission.

6. Accordingly, for the foregoing reasons, the above described request for stay is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-713

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
TWIN STATES BROADCASTING, INC. (ASSIGNOR)
AND
THE MIDWESTERN BROADCASTING CO. (ASSIGNEE)
For Assignment of License of WGLN (FM) (now WXEZ(FM), Sylvania, Ohio

File No. BALH-1561

MEMORANDUM OPINION AND ORDER

(Adopted August 8, 1972; Released August 9, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, ACTING CHAIRMAN; AND H. REX LEE ACTING AS A BOARD.

1. Now before the Commission for consideration is a motion for stay of the effective date of the Commission's Memorandum Opinion and Order, FCC 72-583, released June 30, 1972, filed by the Citizens Committee to Keep Progressive Rock. In that order we affirmed a previous determination by the Broadcast Bureau that a grant of the application for the assignment of the license of Station WGLN(FM), now WXEZ(FM), Sylvania, Ohio, from Twin States Broadcasting, Inc. to Midwestern Broadcasting Co. would serve the public interest. At the same time we also denied a "Petition for Reconsideration" filed by Citizens Committee to Keep Progressive Rock (Citizens).

2. In support of the stay request Citizens asserts:

> WGLN(FM) has already eliminated the Toledo area's only full-time progressive rock station, and substituted in its place pretaped, automated, "middle-of-the-road" programming from a tape service in California. With each passing day hundreds of thousands of residents in the Toledo area will be deprived of their *only* source of full-time progressive rock programming. Moreover, with each passing day WGLN(FM)'s record collection, its sponsors, and its listening audience will slowly be dissipated. If sufficient time is allowed to elapse, even a resersal in the Court of Appeals may not provide effective relief.

We note, however, that despite this alleged necessity for immediate Commission action, petitioner Citizens allowed one month to elapse before filing the instant motion for stay.

3. It has been our practice to grant stays pending judicial review only upon a substantial showing by the petitioner that it will suffer irreparable injury or that the public interest will be adversely affected by the denial thereof, and that there is a reasonable likelihood that it will succeed on the merits of its appeal. *Wheeling Antenna Company, Inc.*, 26 FCC 2d 687 (1970); *Clarkston Broadcasters*, 24 FCC 2d 288 (1970). No adequate showing has been made here.

4. Petitioner's motion for stay, like its prior pleadings before the Commission, reflects an apparent belief that WXEZ's entertainment programming must be totally directed towards the listening tastes of a specific segment of Toledo area residents. We have found that this position raises no substantial question with respect to our basic concern that a licensee have reasonable discretion in program choice and that the varied interests of a community be adequately served. As we stated in our decision denying reconsideration, we will not question the choice of entertainment formats "unless it is shown or appears to the Commission that the format choice is not reasonably attuned to the tastes and general interest of the community of license." Station WXEZ is, of course, licensed to primarily serve the varied interests of the people of the suburban community of Sylvania, Ohio rather than the larger nearby city of Toledo. And, WXEZ is the only local broadcast outlet for Sylvania while Toledo is presently served by eleven local radio stations (AM & FM). As we pointed out in our *Primer on Ascertainment of Community Problems*, 27 F.C.C. 2d 650 (1971) "... an applicant's primary obligation is to his city of license, his obligation to other areas is, of course, secondary." Similarly, the *Suburban Community Policy Statement*, 2 F.C.C. 2d 190 (1965) reflects our desire to assure that suburban community stations such as WXEZ primarily serve the people of their community of license rather than develop into substandard outlets for a larger nearby city.[1]

5. Accordingly, we adhere to the view set forth in our Memorandum Opinion and Order, FCC 72-583, released June 30, 1972 and reject petitioner's basic argument that *Citizens Committee* v. *F.C.C.*, 426 F.2d 263 (D.C. Cir. 1970), is controlling in this case. That proceeding involved a proposed change of format for an AM-FM combination in Atlanta, Georgia—a community which had 20 radio stations. While the Court remanded the matter for hearing, it acknowledged that the situation would have been entirely different "if there were only one radio channel available to Atlanta." *Citizens Committee* supra at p. 269. Therefore, we are persuaded that *Citizens Committee* is distinguishable from the case at hand, and there is no basis for concluding that petitioner is likely to succeed on appeal.

6. Furthermore, we do not believe petitioner has made any substantial showing that denial of stay will be injurious to the public interest.

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[1] In this connection, we are normally only concerned with evaluating non-entertainment programming designed to meet local problems, (See *KNOK Broadcasting, Inc.*, 29 F.C.C. 2d 49, 50-51 (1971)); but it has been generally noted elsewhere that a single broadcast outlet for a community "may have a greater obligation to cater its entertainment programming to the tastes, needs, and interests of all segments of the community's population" than an outlet in a multi-station market. *City of Camden*, 18 FCC 2d 412, n. 22 (1969).

In this respect, petitioners have never questioned the fact that Toledo presently has two stations utilizing a "Top Forty" entertainment format which, though not devoted exclusively to petitioners' tastes, include some "progressive rock" music in their programming. The motion for stay therefore will be denied.

7. Accordingly, IT IS ORDERED That, the motion for stay filed by Citizens Committee to Keep Progressive Rock on July 31, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-729

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of U.S. COMMUNICATIONS CORP. (TRANSFEROR) AND METROMEDIA, INC. (TRANSFEREE) For Transfer of Control of U.S. Communications of Ohio, Inc., Licensee of Station WXIX-TV, Newport, Ky.-Cincinnati, Ohio	File No. BTC-6731

MEMORANDUM OPINION AND ORDER

(Adopted August 9, 1972; Released August 15, 1972)

BY THE COMMISSION: CHAIRMAN BURCH AND COMMISSIONER HOOKS ABSENT; COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS H. REX LEE AND WILEY CONCURRING AND ISSUING STATEMENTS.

1. The Commission has before it the above-captioned application for transfer of control of U.S. Communications of Ohio, Inc., licensee of Station WXIX-TV (Channel 19), Newport, Kentucky-Cincinnati, Ohio from U.S. Communications Corp. to Metromedia, Inc.

2. Metromedia is presently the licensee of the following television stations:

Call letters	Location	ARB ranking according to net weekly circulation
WNEW-TV (channel 5)	New York, N.Y	1
KTTV-TV (channel 11)	Los Angeles, Calif	2
WTTG-TV (channel 5)	Washington, D.C	8
KMBC-TV (channel 9)	Kansas City, Mo	22
WTCN-TV (channel 11)	Minneapolis, Minn	16

Station WXIX-TV (Channel 19) is located in Newport, Kentucky-Cincinnati, Ohio, the 15th largest market. In view of Metromedia's ownership of five VHF-TV stations in the Top-Fifty television markets, its proposal to acquire another station in those markets is subject to the "compelling public interest showing" specified in the Commission's Report and Order released February 9, 1968 (12 RR 2d 1501).

3. As background, it should be noted that the Commission has twice waived its Top-Fifty Policy with respect to Metromedia. Most recently, the Commission approved Metromedia's acquisition of it's fifth

VHF–TV station in the Top-Fifty markets.[1] In 1968, the Commission permitted Metromedia to acquire a losing UHF–TV station in the San Francisco market (KSAN). *Metromedia Inc.* 12 FCC 2d 50, 12 RR 2d 561.[2]

4. There has only been one other instance where the Commission has waived its policy to permit the acquisition of a sixth TV station in the Top-Fifty markets. *Taft Broadcasting Company*, 17 FCC 2d 876, 16 RR 2d 263 (1969). Grant of that application was based on the following considerations:

1. The station was a losing operation;
2. The market was dominated by multiple owners and the networks;
3. Taft proposed to spend large sums of money for new equipment and programming; and
4. Taft proposed public affairs programming directly related to the needs of Negroes and the economically disadvantaged.

5. Here, as in the *Taft* case, the present licensee has sustained substantial losses while operating UHF Station WXIX–TV and it and its parent are unable to continue funding the station in view of its losses, as well as those of its other UHF stations. Similarly, Metromedia has established: 1) that there are a plethora of competing media, broadcast and print, penetrating the station's service area (Grade B contour)[3] and 2) that the market is dominated by television licensees with multiple communication media holdings locally as well as nationally, each of which is a VHF station affiliated with a national network.[4]

6. Metromedia has not, however, made any promises to initially spend large amounts of money on either equipment or programming, nor has it pledged to inaugurate substantial amounts of public affairs programming. Metromedia explains that in light of its experience with KSAN–TV, San Francisco (See note 2, *supra*) it will, in the beginning, use its broadcast experience and resources to make WXIX–TV a viable operation. Metromedia has submitted a plan for increased emphasis on local news once WXIX–TV has become economically viable. In addition, the assignee has pledged that, if and when WXIX–TV becomes profitable, it will devote a "meaningful share of those profits in public service efforts for the community".

7. Metromedia will, in any event, broadcast the following programs to meet community needs:

1. "Wonderama"—a 3 hour, Sunday morning program for children.

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[1] WTCN–TV, Minneapolis, Minnesota, an independent station. FCC 72–525, FCC 2d (1972).

[2] This station was purchased for $1,000,000, however, Metromedia could not make it a financial success and donated it to the Bay Area Educational Television Association.

[3] 31 TV stations, 86 radio stations, 46 CATV systems, 30 daily newspapers, 11 Sunday papers, 103 weeklies and 4 "shoppers".

[4] The licensees and their holdings are: *Taft Broadcasting Co.*, AM & FM in the market and numerous broadcast holdings nationally; *Avco*, a 50 kw full-time AM in the market and multiple broadcast holdings nationally; and *Scripts-Howard*, daily newspaper in the market, a national chain of newspapers and other broadcast holdings nationally.

2. "The New Zoo Parade"—a half hour, Monday thru Friday program for children designed to educate youngsters about some particular topic, such as "space" or "work".

3. "Alternatives"—a half hour monthly program which brings together youths from various backgrounds to discuss their problems.

4. "Community Bulletin Board"—daily at sign-on.

5. "Focus"—Members of various community organizations are invited to appear and make an informative statement about the function of their organization. These announcements will be a portion of the 70 public service announcements proposed to be broadcast each week.

6. Several religious programs.

In the area of news broadcasting, Metromedia proposes to air a network newscast on the weekends.

8. Thus, while all the factual elements in *Taft Broadcasting, supra*, are not present here, the Commission is nevertheless of the view that the "compelling public interest" requirement has been met. This case represents an almost classic example of the situation where Commission policy pronouncements come into conflict. On the one hand is the "Top-Fifty Market Policy". On the other, is the Commission's long effort in attempting to make UHF television a viable programming source to the public *and*, our often expressed desire to provide the public, wherever possible, with an attractive alternative to network programming.

9. In Cincinnati, WXIX-TV was finally constructed by a licensee with substantial financial resources behind it, but no previous experience in broadcasting.[5] It has been unable to make this UHF station a viable competitive factor in this market dominated by three network affiliated VHF stations. Metromedia, with its long experience in successful independent television operations, would appear to offer the best, if not the only, present means of establishing this UHF station as a viable independent programming source in the Cincinnati market.

10. In view of the foregoing we conclude that Metromedia has made a satisfactory compelling affirmative showing that the public interest would be served by its acquisition of WXIX-TV. Accordingly, based upon our determination that the transferee is fully qualified and that the public interest convenience and necessity would be served thereby, IT IS ORDERED, That the above captioned application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[5] U.S. Communications Co., a subsidiary of The AVC Corporation, obtained the construction permit from D. H. Overmyer who had in turn obtained it from another.

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I have concurred in the approval of Metromedia's acquisition of control of the licensee of Station WXIX-TV primarily because the transfer will permit the continued operation of the only independent programming source in the Newport-Cincinnati market. There is no dispute that the present licensee has incurred substantial operating losses, that its parent company is unable to continue its funding of station operations, especially in light of severe financial losses sustained by other licensee-subsidiaries, and that WXIX-TV's competitors are established VHF stations with network affiliations. In my own opinion, therefore, the present proposal represents an effective means of preserving an independent UHF station and of creating some meaningful competition in the market with the introduction of a corporation with successful experience in independent operations.

My concurrence, however, should not be interpreted in any way as a repudiation of the Commission's Top-50 Market Policy. As I've already noted before in a different context,[1] that policy should be encouraged for it promotes diversification of media viewpoints in the largest television markets and effectively inhibits the continued concentration of station ownership. However, I do not consider the policy to be immutable in all circumstances, and it is for the sake of preserving a viable programming source in the Newport-Cincinnati market that I have decided to concur in the grant of the WXIX-TV transfer application.

I am fully aware that Metromedia has not promised to spend large amounts on either equipment or programming and has not pledged to present substantial amounts of news and public affairs programming. Instead, it has candidly disclosed that its first order of business is to establish an economically viable station and that, thereafter, it will implement a long-range plan for increased emphasis on public service offerings. Nevertheless, I am willing to accept Metromedia's proposal in light of its past performance as a broadcast license-holder. I also intend to review Metromedia's stewardship of WXIX-TV when the station's renewal application is filed next year. Even though approval of the transfer application permits Metromedia to acquire another television station in the top-50 markets and to that degree works counter to our diversification policies, I do think that the proposal represents perhaps the only effective way of preserving a UHF programming source which is in serious financial straits.

CONCURRING STATEMENT OF COMMISSIONER RICHARD E. WILEY

I concur in the Commission's approval of this transfer application because I believe it offers perhaps the only realistic hope for a viable independent UHF television facility in a market dominated by VHF affiliates with other media connections.

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[1] See my statement in regard to the application for transfer of control of Mount Hood Radio & Television Broadcasting Corporation, licensee of Stations KOIN, KOIN-FM and KOIN-TV, Portland, Oregon, Public Notice of October 1, 1971 (Report No. 10163).

It is apparent that the present licensee of WXIX–TV has incurred substantial financial losses in its operation and is unable to absorb further losses. Metromedia is willing to devote its financial resources and extensive experience as an operator of successful independent television stations to make WXIX–TV an economically viable UHF operation. In my opinion, the infusion of Metromedia's talent and resources may result in the creation of a truly competitive independent communications voice in the Newport, Kentucky-Cincinnati, Ohio market and thereby advance the Commission's long-standing policy of encouraging the growth and development of UHF television. Therefore, under the circumstances, I believe that a "compelling public interest" showing for approval of the transfer has been made.

Nevertheless, I am not completely satisfied with Metromedia's public service programming proposals. Accordingly, I intend to carefully review WXIX–TV's license renewal to be filed next year with the hope and expectation that, if improved financial conditions prevail, Metromedia will be able to augment its commitment in this regard.

F.C.C. 72-670

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of
THE WESTERN UNION TELEGRAPH CO.
For Construction Permits in the Domestic Public Point-to-Point Microwave Radio Service To Modify Existing Stations To Establish Digital Transmission Systems Between New York, N.Y., Philadelphia, Pa., and Three Intermediate Points; Between Philadelphia, Pa., Tenley (Washington, D.C.) and Four Intermediate Points; and Digital-Analog Facilities Between Chicago, Ill., Cincinnati, Ohio, Pittsburgh, Pa., and 20 Intermediate Points
For Authorization Pursuant to Section 214 of the Communications Act To Construct and Operate Channelizing Equipment in Connection With the Proposed Modified Microwave Facilities Between New York, N.Y., Philadelphia, Pa., and Tenley (Washington, D.C.)

File Nos. 2362 through 2366–C1–P–71, 5835 through 5840–C1–P–72, 78 through 100–C1–P–72
File No. T–C–2359

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

(Adopted July 26, 1972; Released July 31, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The Commission has before it: the above-captioned applications of The Western Union Telegraph Company (Western Union) filed on October 29, 1970, July 12, 1971, and February 25, 1972; pleadings in opposition to the New York-Washington applications filed by Interdata Communications Inc. (Interdata); a petition to deny the Chicago-Cincinnati-Pittsburgh applications filed by MCI Communications, Inc., MCI-New York West, Inc., MCI Kentucky Central, Inc., and MCI Indiana-Ohio, Inc. (MCI carriers); and various responsive pleadings and amendments to such applications.[1]

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[1] Specifically, with respect to the New York-Washington route: Western Union filed Nos. 2362/66–C1–P–71 (New York-Philadelphia) and T–C–2359 (New York-Washington) on October 29, 1970; Interdata filed a "Motion to Dismiss and For other Relief" on December 4, 1970; Western Union was granted leave to file its "Opposition" on January 14, 1971; Interdata filed a reply on January 29, 1971; and Western Union amended Nos. 2362/66–C1–P–71 (New York-Philadelphia) and filed Nos. 5835/40–C1–P–72 (Philadelphia-Washington) on February 25, 1972. With respect to the Chicago-Pittsburgh route: Western

2. Western Union's general plan for the development of digital transmission capability comprehends paralleling selected existing analog FDM microwave sections with new TDM microwave equipment on a phased implementation basis to establish a combined facility with both analog and digital TDM transmission capability. It claims that the digital "overbuild," utilizing common plant facilities with the existing microwave systems, is an economical method of acquiring the additional capacity needed for the future. Western Union states: "the new digital transmission capability of the proposed system will permit Western Union to provide data communications services to the public with flexibility, efficiency and reliability not attainable using analog facilities, while the existing analog capability will be retained to handle present and future voice and general FDM load with high efficiency." Portions of Western Union's overall plan for hybrid analog/digital system facilities have already been authorized. Cincinnati, Ohio-Atlanta, Georgia (File Nos. 5623/33–C1–P–70 and T–C–2352), FCC 71–391, adopted April 14, 1971; Tenley (Washington, D.C.)-Middletown, VA. (File Nos. 6750/53–C1–P–71 and T–C–2464), by staff action on May 16, 1972 and June 16, 1972 (Common Carrier Services Information, Report No. 601, June 26, 1972).

3. With respect to the instant applications, Western Union stated that (as of October, 1970) its existing New York-Washington facilities were committed to 60% (11–13 supergroups) of the maximum capacity of 1200 equivalent frequency channels (20 supergroups). In light of its annual growth rate of 15% and other growth requirements such as TWX, Western Union estimated that these system facilities would approach saturation by 1972–1973. The proposed facilities would add a 6.3 megabit digital capacity to the New York-Washington route, and enable it to transfer a large proportion of its existing digital type traffic from the analog to the digital facilities. Western Union further stated that the Chicago-Cincinnati-Pittsburgh route (authorized in 1956 to establish a 48 voice frequency channel system) needs modernization and increased traffic capability to meet its requirements. The proposed hybrid system replacement would be capable of accommodating 6.3 megabits of digital traffic plus 300 voice grade channels of analog traffic. According to Western Union, a grant of its proposals would create "optimum transmission facility utilization by handling analog traffic on the analog system and digital traffic on the digital system with such inherently derived benefits as improved traffic handling efficiency, lower first and annual costs and the growth potential required to effectively compete in the present and future communications markets."

Union filed Nos. 78/100–C1–P–72 on July 12, 1971; the MCI carriers filed a "Petition to Deny" on August 18, 1971; Western Union filed a "Motion to Strike, or in the alternative, Opposition" thereto on September 8, 1971; the MCI carriers filed a reply on September 16, 1971; and Western Union filed amendments to such applications on April 10, 1972. American Telephone and Telegraph Company (AT&T) sought and was granted various extensions of time within which to file a petition to deny the Chicago-Pittsburgh applications, but notified Western Union by letter dated March 6, 1972 that it no longer had any objections. Western Union furnished a copy of AT&T's letter to the Commission on March 29, 1972. On July 14, 1972 Western Union supplemented T–C–2359 to request authority under Section 214 to channelize the Philadelphia-Washington portion of the New York to Washington route.

4. Total system construction costs, including the channelizing equipment for initial facility utilization, are estimated at close to $7 million (New York-Philadelphia: $1,702,900; Philadelphia-Washington: $1,316,500; and Chicago-Pittsburgh: $3,831,000).[2] Western Union's balance sheet shows cash on hand as of December 31, 1971, in the amount of approximately $28 million, an increase of about $8 million during the year 1971 (Western Union's Annual Report to the Commission for the year ended December 31, 1971, page 18).

5. In challenging the New York-Philadelphia portion of Western Union's New York-Washington applications, Interdata asserts principally: that these applications are untimely filed as against Interdata's own applications for a New York-Washington microwave route and are not entitled to comparative consideration; that Western Union has filed pleadings in an effort to delay action on Interdata's applications while at the same time seeking to occupy the field in advance; and that Western Union's financial showing is inadequate under Part 63 of the rules and does not take account of other proposed undertakings such as Western Union's applications for a domestic satellite system. The challenge of the MCI carriers to Western Union's Chicago-Pittsburgh applications consists primarily of an assertion that Western Union should not be permitted to hold up its competitors with unsubstantiated claims (particularly relating to frequency interference and blockage), while its own applications for facilities potentially usable in the competitive services are handled in due course.

6. These contentions are largely moot in view of the Commission's *First Report and Order* in Docket No. 18920 (29 FCC 2d 870); the grant of Interdata's applications for a New York-Washington route on October 15, 1971 (FCC 71-1062); and the grant of the applications of MCI-New York West for microwave facilities between New York and Chicago on May 26, 1972 (FCC 72-456). Issues relating to possible frequency interference in connection with Western Union's proposed facilities also appear to be moot since the applications have been amended to reflect the elimination of frequency conflicts. The challenge to Western Union's financial qualifications to construct and operate the instant facilities appears lacking in merit in light of the factors set forth in paragraph 4 above.[3]

7. In view of the foregoing, we conclude that the facilities proposed in the captioned applications will serve the public interest, convenience and necessity. We further find that Western Union is legally, technically, financially and otherwise qualified to construct and operate the proposed facilities. We will, therefore, grant the applications subject to the condition that the facilities shall be used only for the provision of existing services and no new classification or subclassifica-

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[2] Approximately one half million of the estimated costs for the New York-Washington route represents the value of radio equipment on stock in Western Union's warehouse. Western Union has apprised the Commission that there is no loan or other credit arrangement to be consummated to finance the establishment and operation of the proposed facilities.

[3] We find it unnecessary to determine here whether Western Union is also financially qualified to undertake its domestic satellite proposal. That determination will be made in conjunction with action on the latter applications.

tion of service shall be instituted without prior authorization of the Commission.[4]

8. Accordingly, IT IS ORDERED, That the captioned applications ARE GRANTED and Western Union IS AUTHORIZED to supplement its facilities by the establishment and operation of the channel quantities proposed in File No. T-C-2359 (or equivalent thereof);[5] PROVIDED, HOWEVER, That the authority granted herein covers only the construction and installation of the facilities specifically described in said applications and the operation of so much thereof as will be equipped and capable of operation at the time such facilities are constructed and installed, and does not cover the construction, installation or operation of any additional facilities which increase the number of communication channels derived from the facilities herein authorized; and PROVIDED, FURTHER, That the grant of File Nos. 78/100-C1-P-72 does not constitute action on any request for authorization under Section 214 of the Communications Act to install and operate channels on such facilities. In the event such applications are not ultimately approved, related construction costs will not be included in any rate base, or charged to expense for rate purposes, but will be charged against surplus.

9. IT IS FURTHER ORDERED, That the objections of Interdata and the MCI carriers ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[4] This condition is subject to any action taken by the Commission pursuant to its Notice of Proposed Rule Making in Docket No. 19117, released January 14, 1971, 27 FCC 2d 36.

[5] As requested in Exh. 4 to Western Union's letter filed on October 26, 1970 and in its supplementary letter filed on July 14, 1972, Western Union is authorized to install and operate the following channels:

	Number of low speed channels (up to 180 BPS)	Number of high speed channels (up to 2400 BPS)
New York-Philadelphia	550	6
New York-Baltimore	110	2
New York-Washington, D.C	275	4
Philadelphia-Baltimore	55	3
Philadelphia-Washington, D.C	220	15
Baltimore-Washington, D.C	220	14

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Re Request by
WESTERN UNION TELEGRAPH CO.
For Authorization To Inspect Information of International Record Carriers

AUGUST 15, 1972.

JACK WERNER, Esquire,
RODERICK A. METTE, Esquire,
The Western Union Telegraph Co.,
1828 L Street NW.,
Washington, D.C. 20036

DEAR MESSRS. WERNER AND METTE: This is in reply to your letter of December 3, 1971, in behalf of The Western Union Telegraph Company (Western Union), for authorization under Section 0.461 of the Commission's rules, 47 CFR § 0.461, to inspect and copy certain information the international record carriers furnished the Commission in response to its request of December 15, 1970.[1]

Your letter describes the information sought as consisting of certain cost allocation studies submitted by the international record carriers which indicate "their revenues, investment and operating cost, separated by principal classifications of service and by geographic areas." As you are aware, the Commission had requested those carriers to prepare individual cost studies for the year 1970 in order to gain experience in working with the proposed procedures set out in a cost allocation manual worked out among the record carriers and our staff. In addition, you know from the copies of the carriers' responses that they all have opposed the granting of your request.

Your letter states in some detail the "particular need" Western Union has for these cost studies, and among other reasons, contends that the overseas carriers "have specifically put in issue their cost of service" by arguing that they cannot "absorb any increases in Western Union's landline charges." The carriers have also put forth several different reasons in opposing the release of the studies. Some have alleged that the disclosure of their studies would prejudice their companies "in a highly competitive industry" and that the figures contained in the studies might be used by their competitors to their detriment. Several have indicated that their competitors should not have such information if similar information concerning their competitors is not made available to them. The carriers have also expressed concern about the reliability of the figures and the appropriateness of the proposed allocation procedures to their operations, and some have indicated that Western Union or the public might rely on the studies to the detriment of the companies furnishing them.

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[1] The carriers affected by your request are as follows: ITT World Communications, Inc. (ITT Worldcom), RCA Global Communications Inc. (RCA Globcom), Tropical Radio Telegraph Company (Tropical Radio), Western Union International, Inc. (WUI), and Cable & Wireless/Western Union International, Inc. (C&W/WUI).

However, the view we take of this matter makes it unnecessary to decide which reasons should prevail. This is because the Communications Act of 1934, as amended, contains a specific provision, 47 U.S.C. § 412, which we believe is controlling in deciding the disposition of your request. This section entitled, "Documents Filed To Be Public Records-Use in Proceedings," is based upon an earlier very similar provision in the Interstate Commerce Act, 49 U.S.C. § 16(13).

It provides in pertinent part as follows:

> . . . and the statistics, tables, and figures contained in the annual *or other reports of carriers* . . . made to the Commission as required under the provisions of this Act[2] *shall be preserved as public records* in the custody of the Secretary of the Commission, . . . *Provided*, That the Commission may, if the public interest will be served thereby, keep confidential any contract, agreement or arrangement relating to foreign wire or radio communication when the publication of such contract, agrement, or arrangement would place American communication companies at a disadvantage in meeting the competition of foreign communication companies.[3] (Emphasis added.)

From the section quoted above, it appears that reports the Commission requires of the carriers, pursuant to the Communications Act, are to be public records unless in accordance with the proviso clause, the Commission determines that it would be in the public interest to keep them confidential because their publication would place the domestic carriers at a disadvantage with their foreign competitors. Although the materials under consideration here are called cost allocation studies, we think it clear that in fact they amount to "other reports of carriers." We further believe that the carriers have not shown how they would be at a disadvantage in meeting the competition of foreign communication companies, and how the public interest would be served by keeping the studies confidential. While all of the carriers have generally opposed release of their studies because a competitor such as Western Union might be able to use their material against them, none has indicated how the release of the studies could be expected to be used by foreign competitors to their detriment. For example, three carriers (WUI, ITT Worldcom and C&W/WUI) have alleged that figures contained in their cost studies might be used by competitors to their detriment but this is as specific as they have been. We do not believe that allegations as general as this are sufficient to invoke the protection afforded by the proviso, and that in the absence of any showing of potential competitive injury by foreign competitors, Section 412 of the Communications Act requires the disclosure of reports filed by these carriers in the form of cost allocation studies.

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[2] With respect to the phrase, "under the provisions of this Act," Section 219 of the Communications Act authorizes the Commission to ". . . by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act." Failure to file such reports subjects the carriers to forfeiture liability.

[3] The language used in the proviso does not make it expressly applicable to reports. However, it is clear that Congress intended the proviso to apply to all information required by Section 412 to be preserved as public records.

We recognize, as the carriers themselves have pointed out that the figures and results shown in these studies may not be sufficiently current for your purposes. The carriers have indicated that the data for the year 1970 are outdated in view of the changes that have occurred in the industry since then. In addition, the Commission has not formally adopted the cost allocation procedures outlined in the manual, and prior to any final action that may be taken in this respect, all parties affected by such a proposal will be given an opportunity to comment on the adoption of the proposed procedures. Thus, the carriers are quite right in emphasizing that the studies are only a trial run of the procedures currently being tested. In fact, we have not completed our review of the cost studies and until such review is completed, we cannot say that the procedures are sufficiently reliable for the cost of service and rate of return studies that the Commission may require.[4] Nevertheless, the foregoing provides no basis under the Public Information Act for non-disclosure of this information in view of the requirements of Section 412 of the Communications Act.

Accordingly, in view of the provisions of Section 412 of the Communications Act, I am granting your request to inspect and copy the data submitted to the Commission by ITT Worldcom, RCA Globcom, Tropical Radio, Western Union International, Inc., and Cable & Wireless/Western Union International.[5] For the same reason, I am denying the requests of the international record carriers (ITT Worldcom, RCA Globcom, WUI, and C&W/WUI), that these materials not be made available for public inspection. Pursuant to Section 0.461 (d)(2) of the Commission's rules, the materials in question will not be made available until the carriers have had an opportunity to file for review. Arrangements to inspect and copy this material may be made with Abbott Roseman, Chief, International and Satellite Communications Division, Common Carrier Bureau.

Sincerely yours,

JOHN M. TORBET,
Executive Director.

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[4] The staff is currently reviewing the test runs made to determine both their compliance with the manual as well as the efficiency of the manual. It is possible that the carriers may have deviated from the manual in some respects, and if there were such deviations, certain inconsistencies in the study would probably result. In addition, some of the carriers are already on record as opposing the appropriateness of the proposed allocation procedures.

[5] It should be noted that information of this character will not become "routinely available for public inspection" under our rules and that specific requests for disclosure under Section 0.461 must be made in each instance.